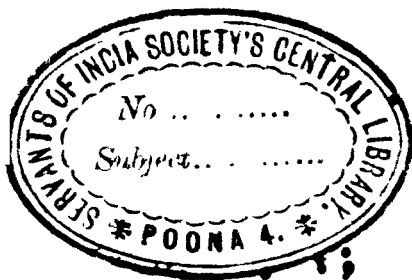


FEDERATIONS

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Rare section.



# FEDERATIONS

*A Study in Comparative Politics*

BY *Rare section*

D. G. KARVE, M.A.

*Professor of History and Economics, Fergusson College, Poona*

WITH A FOREWORD

BY

SIR J. A. R. MARRIOTT

*Honorary Fellow (late Fellow) of Worcester College, Oxford  
Late M.P. for York*

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HUMBLY DEDICATED TO THE MEMORY OF  
THE LATE HON'BLE MR. G. K. GOKHALE  
MEMBER, IMPERIAL LEGISLATIVE COUNCIL  
FOUNDER OF THE SERVANTS OF INDIA SOCIETY AND  
PROFESSOR OF HISTORY AND ECONOMICS IN  
THE FERGUSSON COLLEGE, POONA

## FOREWORD

I HAVE done no more than glance very hastily at the proofs of this book. Consequently I can neither vouch for the accuracy of the facts, nor endorse the opinions of its author. Nevertheless, although Mr. Karve is a stranger to me, I cannot refuse his courteous, and indeed gratifying, request, for a few words of prologue to his work on *Federations*.

In the sphere of Government, the future, I am convinced, belongs to Federalism. 'It is', said Lord Acton, 'the only method of curbing not only the majority but the power of the whole people, and it affords the strongest basis for a Second Chamber, which has been found the essential security for freedom in every genuine democracy.' In that judgment I concur; and I welcome the evidence afforded by this book that Indian students of Politics are applying their minds to the complex and difficult problems which every form of Federalism presents.

For no two Federations are exactly alike. If they were, we may be certain that one or other of them would speedily proclaim itself a failure. The best wine can be drunk in perfection only in the country of origin. Political institutions are a product at least as delicate as wine. They do not, as a rule, bear transportation—save, of course, in the case of Colonies which carry into new lands the traditions of the older home.

For this, as for other reasons, it is remarkable that the federal system of Government has not commended, among Political Theorists, much more attention than has hitherto been accorded to it.

It is, indeed, true that the inductive method,—the only scientific method properly applicable to Politics—has not, as yet, got much material to work upon. That method Mr. Karve has very wisely adopted, and, (so far as a hasty glance enables me to judge) he seems to have collected, and systematically arranged, the whole available material. What conclusions, if any, he draws therefrom I have not sought to discover. It is better not. I might be led on to approval, or maybe to criticism. As it is, I content myself with the expression of a hope that other Indian students may be led to follow Mr. Karve's industrious and laudable example, and that the study thus induced may fructify to the advantage of the great sub-continent in which they dwell.

J. A. R. MARRIOTT

LONDON

*August 1932*

## PREFACE

At a time when in many parts of the world there are clear indications of a revived interest in federalism, very little apology is needed for the production of the present book. Federalism and federal constitutions have always been a subject of the most engrossing scientific and practical interest to students of politics and history. Indeed, several learned treatises bearing on particular types and groups of federations have been published in the past. But there are few recent publications which treat of federal constitutions in a historical, comprehensive and comparative manner. The present work is an attempt to meet, howsoever partially, this long-felt want of students of political institutions. The author is only too conscious of the fact that he is inadequately equipped to do full justice to the task he has chosen. In particular the first-hand touch with the actual working of constitutions discussed in the book, which is such a refreshing feature of some of the best known books on modern governments, is likely to be missed by the careful student. An attempt has, however, been made to use all the material available through English and it is hoped that the book will be found of some interest to serious students of the theory and practice of federalism.

The author is very deeply indebted to the eminent English historian and political scientist who has so kindly written a foreword to this book. It is superfluous, if indeed it is not altogether presumptuous, to mention that Sir John Marriott is in no way responsible for any

statements of facts or views contained in the book, for which the author is alone responsible. I take this opportunity to thank Sir John for his encouragement.

I have also to thank the authorities of the University of Bombay for a grant towards the expenses of the production of this book.

D. G. KARVE

*Fergusson College*  
*Poona*



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# CHAPTER I

## FEDERALISM

OUT of the two problems that chiefly arrest the attention of students of present political institutions, one refers to the unit of political organization and the other to the internal mechanism of the state. Though it is difficult to generalize, in too sweeping a fashion, about social movements, it may now be averred without much fear of contradiction that the day of despotic constitutions is gone for ever. On a superficial thought, such a statement appears to be belied by the rule of virtual dictators in such countries as Italy and Turkey. These instances, however, only serve to emphasize the fact that, in modern times, it has become essential even for dictators and despots to secure the sanction, virtually and constitutionally, of the general body of citizens. Though local circumstances must, in each case, explain the emergence of dictatorships in their peculiar form, it may at least be suspected that this phenomenon is not altogether unconnected with two vital drawbacks in the prevalent organization of national democracies. The obsession of the national state, uncorrelated with the facts of modern life of intense international interdependence on the one hand, and with the realities of local affiliations and identity of interests on the other, creates just the material and the psychological atmosphere in which capable and ambitious politicians may ride to dictatorial power on the wave of the

patriotic, if helpless, enthusiasm of their fellow countrymen. The most approved mechanism of the modern national democracy, namely the parliamentary executive, has proved to be exasperatingly devoid of initiative, candour and constructive statesmanship even in the best manifestations of that system. Unless something is done to adjust both the unit and the machinery of the state to meet the requirements of the present-day world, a very serious check will be placed on the peaceful progress of human civilization.

So far as the problem of the parliamentary executive is concerned, unfortunately it is yet too true that our statesmen consider such a form as the last word in the working of modern democracy. In countries where a long experience of the working of this system has been secured, a feeling of impatience against its shortcomings is growing rapidly without, however, seriously affecting the views and actions of the leading statesmen on this subject. With respect to the unit of political organization things are fortunately otherwise. Various considerations of a practical and theoretical nature have combined to bring to light the limitations of exclusive and paramount national sovereignty. Every day the principle of federation is making new conquests.

The state, in essence, is the expression of the sense of social or civic unity felt by men. Hence it is that the unit of political life has always kept pace with the development of a sense of social consciousness. We can trace the outlines of an evolutionary process through the various stages such as tribe, village, city, principality, and nation, in keeping with a parallel process of economic and social expansion. Widening

**Economic  
and cultural  
factors in  
political  
evolution**



of the field of exchange and extension of the limits of the state have very often gone together. Particularly, in areas where, under the modern industrial regime, economic interests have appeared to be identical, some sort of a common political life has emerged. Zollvereins have often paved the way for a composite state existence. With the growing scale of political organization consequent upon the widening of the economic limits, strong local feeling had, in many cases, to be overcome. It was, however, discovered that so long as political expansion kept pace with economic assimilation, the needs both of efficiency and political freedom could be met by devising a constitution wherein the wider authority confined itself to wider functions, leaving the regulation of local interests to substantially independent local institutions. As the Industrial Revolution works itself out in one country after another, the economic ties that bind the nations are becoming even more vital. The course of the present trade depression, the accusation levelled against two prominent countries that they, by their policy of gold sterilization, were largely contributing to the disaster, and the remedies of international co-operation suggested in this behalf have a political significance of more than passing importance. If we look at the thought of the modern world, we find that a world-culture and a world-thought are emerging not only amongst the few intellectuals in each country but also amongst the multitudinous proletariat. With the widening spirit of cultural and economic unity, a new international sense has emerged which is feeling its way to crystallization in concrete form. The League of Nations and its allied institutions are undoubtedly the anticipations, if not the nucleus, of a new and further stage in the process of political evolution. Whatever

may be the actual features of the world state when it comes into being in the fulness of time, it cannot be doubted that its structure will have to be federal and democratic.

The motive that historically has served as the earliest and most pressing factor in bringing about a joint state-life is admittedly that of defence. Like the economic and the cultural, this military factor also is every day emphasizing the need for a further expansion of the federal idea. That the establishment of the League of Nations was the outcome of a Treaty of Peace is no mere accident. Only under the pressure of the horror of the biggest war in history, could the nations reconcile themselves to the creation of a body which has all the airs of a super-state about it. The promise of the abolition of war had so great a psychological appeal for a war-possessed people that they were prepared to make substantial sacrifices of vanity, authority and tradition for even a plausible apology for 'peace'. The League as a body has not been able to achieve much concrete success in removing the causes of war from among the more important countries of the world. But the other methods for implementing League ideals that have been followed by Great Britain, the United States of America, France and other leading countries have been essentially of an international character. There may have been several other reasons underlying the proposal of the late M. Briand for the formation of a United States of Europe. But it can hardly be denied that such a proposal coming from such a quarter emphasized the inadequacy of the national state to house the new feeling of international loyalty and co-operation which every

**International  
organization  
to secure  
defence**

civilized nation had come to entertain, and the suitability of a federal model to give expression to that reality.\*

It is indeed true that the big states who form the most dominant part of the present international organizations, are still too apt to think of the smaller states as only pawns in the game, and to disregard altogether the legitimate interests of the backward peoples. This fact only points out the imperfect stage to which the feeling of internationalism has yet attained. But even these peoples will find their own salvation and will be able to contribute towards the speedier realization of a world-federation by organizing themselves for economic and defensive purposes under a federal constitution. The signs of such a movement are visible in many of the smaller and backward countries. Wherever the demands of local autonomy are to be reconciled with the requirements of a widening scale of political, economic, or military activity, no better solution of the constitutional difficulty has been found than the establishment of a federation.

There is another, more fundamental if less practical, set of considerations which also point unmistakably towards a federal state as the only admissible form of a truly democratic principle. The days when the praises of representative government as the best solution of the problem of democratic rule were sung both by political philosophers and popular leaders have gone for ever. The experience of the working of national representative bodies, if not altogether disappointing, has at any rate failed miserably to fulfil the hopes of a just, efficient, and progressive government that were entertained about them. The conception that the elected representatives in parliament assembled do, in

**Creative  
citizenship  
and  
federation**

any real way, represent either the views or the interests of those who are persuaded to vote for them, is found to be utterly untenable. The role played by the primary voter has been too passive and unintelligent to be helpful either to himself or to the community. The old spirit of loyalty to a democratic state as embodying the will of the people is being daily undermined by new experiences and theories. The legislatures, elected even on universal suffrage, have shown themselves so far incompetent to judge of issues of vital moment to important classes in the community, that the laws of a democratic state may be said at present to be on their defensive almost to the same extent as the laws of a despotic government. A new version of obedience to laws is being preached by responsible thinkers. Obedience to any laws which the people have not actively co-operated in formulating, is held to be incompatible with the idea of creative citizenship. The critical work that has been accomplished by this school is indeed remarkable. They have also, particularly in Great Britain, some constructive contribution to political institutions to their credit. But on the crucial point as to the unitary versus federal form of government, it is no wonder that the school of creative citizenship backs the federal rather than the unitary model. To reconcile diversity with unity, or rather to create the latter out of the former, is their creed; and if there are any prospects of such an ideal ever being realized through human institutions, the chances lie more with the federal than with the unitary type.

The federal principle draws very strong support from another quarter. Many schools of socialistic thought of all shades of extremism have their own schemes of social reconstruction. These differ very widely in respect

of their particular features and of the method of transition that they favour. But one thing is common to

**Socialistic  
reconstruction  
federal  
in form**

\*all of them—they are based on the federal idea not only as applied to particular states, but in almost all cases, as applied to inter-state relations as well. In fact internationalism is one of the favourite professions of the extreme socialists, and they can hope to give practical expression to their views in this respect only through a federation. The most far-reaching experiment in socialistic reconstruction of society is the one attempted in Russia, and it is professedly at least based on the principle of federation. The most interesting fact about federation, however, is that those who are out to wreck the state, the syndicalists and anarchists, even these expect their future 'societies' to be held together on the federal plan. Instead of compulsion from outside, voluntary and almost intuitive allegiance to an order obviously good and beneficent is expected to supply the bond of obedience in the anarchist federation. It would almost appear that man is not only a political animal, as Aristotle defined him, but a federal creature as well. Or perhaps the political urge is so essentially federal, tends in other words so universally to seek the ends of smaller units by co-operation with others in a bigger one, that political and federal may almost appear as synonymous terms.

In view of this widespread experience of and support for the principle of federation it would sound not a little strange that no generally accepted definition of the term 'federation' has yet been framed. Many constitutional purists have in their time attempted to give a precise definition. Some attempts in this

**Futile at-  
tempts at  
precise  
definitions of  
federalism**

field may here be noticed before discussing the question whether a dogmatic definition of federalism, even if it were desirable, is at all possible. A very learned and responsible writer on political constitutions while defining federations in 1860<sup>1</sup> considered that the right of the component parts to secede from the federation as and when they liked, was an essential feature of federal organization. The union of states known as federal, according to this authority, was formed and continued its existence thanks only to the consent of the constituent sovereign states. We have not known of any responsible constitutionalist contending in this strain after the issue had been fought out in the American Civil War. Certain other authorities in their insistence on precise definitions have been led into making a claim, that it is only when the residue of governmental powers are assured to the component states that their union with the central authority can be termed federal. It was on this ground that the Judicial Committee of the British Privy Council presided over by no less a lawyer and statesman than the late Lord Haldane held that the Dominion of Canada was not entitled to be described as a federation. The weight both of legal and political opinion has since reversed this high judicial pronouncement. Nevertheless there is a tendency among some writers even of the present day to look upon a union where residuary powers rest with the central government as less federal than another in which the residue is enjoyed by the component parts. This is really, as will be clear from what follows, a matter of prejudice rather than of scientific or historical analysis. Another close student of federal constitutions, Freeman,<sup>2</sup> con-

<sup>1</sup> *Political Cyclopaedia*, 1860.

<sup>2</sup> *History of Federal Governments in Greece and Italy*.

sidered it an essential feature of a federation that it should be formed as the result of a union of states that were previously independent, and that any process such as that of devolution, which divided an existing unitary state into smaller units independent in particular matters of the central government and obeying in common the will of the latter in others, cannot be called federal. The only warrant for such a differentiation appeared to be that when Freeman wrote there was no notable example of a federal state having been created by the process of devolution, and that Freeman along with some others looked upon the federal form only as a half-way house between isolated and unitary state-life. We have now got rid of this reservation in the same fashion as of the issues regarding residual powers and the right of secession.

The failure of so many eminent jurists to find a satisfactory definition of federation after the labours of well-

**Federalism  
and social  
unity**

nigh three quarters of a century is to be accounted for by reference to the peculiarities of federalism. The principle of federalism is not like a principle of an exact science such as, say, the science of Geometry, so that when once it is carefully defined, the definition will stand the test of observation and experience for all time. Federation is the name we give to the process by which a widening sense of social solidarity is reconciled with the attachment for local identity, through the provision of a dual political organization. As noted above, the range of human interests is ever widening, giving a new sense of a more complete unity; but at the same time social interests are becoming so diversified that in certain other, almost equally important, respects the unity of feeling and interests is realized

in a more local sphere. This duality of the sense of social unity, arising in different cases in different forms, is, under the pressure of concrete political facts, being provided for by having one wider and several smaller organizations and making them practically self-sufficient for their respective purposes. A definition of federalism, which would meet all its manifestations at a given moment, may be out of touch with realities after the course of time and political evolution have brought new experiences to notice. It is, therefore, hardly possible to frame an elaborate and precise definition of federalism, which may, at the same time, be found to be reliable in practice.

It is sometimes suggested that this difficulty may be overcome by giving up the attempt to frame a definition that will meet all the expressions of federalism, and by defining its perfect form leaving the other less perfect cases to be described by comparison with the same. Apart from the doubtful utility of a definition that would be too rigid to meet even the majority of cases, this course is ruled out of serious consideration by the fact that modern political life even in the so-called perfect manifestations of the federal principle is so complex and dynamic as to supply very little reliable material for the seeker after elaborate definitions. The centripetal and centrifugal tendencies in the so-called perfect manifestations of the federal political balance to which no rigid definition can hope to do justice. Besides, even within the framework of the written constitution of each federation the judiciary by its decisions in constitutional conflicts has reduced the rigidity of the federal constitution to little more than a fiction. The other branches of the state, the

**Ideal form  
of federation  
does not  
exist**



legislative and the executive, also create binding usages the existence of which is hardly to be divined from the written constitution.

An attempt at an elaborate or an ideal definition being thus ruled out of account, we can proceed to note what appear to be the essential features of a federal as distinguished from a unitary constitution. A very loose way of indicating the distinguishing characteristic would be to say that a federal as contrasted with a unitary form of government is a composite and not a simple political organization. The existence of several composite forms of government which are not by any stretch of imagination entitled to be called 'federal' would be an insuperable obstacle in the way of such a procedure. Several such instances have been noted by Bluntschli.<sup>1</sup> The absolute rule of one state over another, as for instance that of Great Britain over India till the year 1921, is a composite form of government and yet not a federation, as the Indian Government, as a unit, had no assured liberty of action till then in any important sphere of governmental activity. Nor has India any share in the common government of the two countries. So also the suzerainty or protectorate of one state over another has to be ruled out of the class of federal states. The position of England in Egypt and of the mandatories under the Versailles treaty in their respective territories has indeed the appearance of a composite political tie; but it cannot be termed federal. The mandated territories have neither local liberty nor wider unity. So also the position of a semi-independent colony in relation to the mother country may appear to

<sup>1</sup> *Theory of the State.*

have elements of federality about it. Such a view may sound plausible on account of the enjoyment by the colony of substantial powers of independent local administration. As, however, there is not enough assurance of their continued enjoyment of these powers and as further they or their subjects have no share in formulating the policy of the government of the mother country in matters outside the control of the colony but affecting the common destinies of both, such a relationship does not come within the class of federal states. Nor is a union, based merely on the personal identity of the governors of two or more states, fit to be called a federation, as there is no organic relationship of a composite description thereby established between the two. The union of Hanover with England on account of the kings of both countries being the same individuals was thus not a federal bond. This was strikingly demonstrated on several occasions of conflict between the Hanoverian kings and their English ministers and finally by the sudden snapping of the tie that held them together.

There is one variety of a composite state existence which so closely approaches but falls short of a federation that it deserves special mention.

**Confederation**

Two or more states coming together and forming a common government for certain specified purposes and agreeing to abide by the decisions of the latter in respect of its proper field would to all intents and purposes create a federal state. If, however, this surrender of sovereignty to a common central government is not absolute and permanent, and if the loyalty of the parts to the collective organization depends on nothing more reliable than the voluntary consent of the component states in each particular instance, there can

hardly be said to be any real extension or integration of the field of sovereignty, or the emergence of any organic and permanent tie between the component states and the central government. In fact, in a case like this no central government really exists. On this account, such a relationship must be rejected as forming part of the class of federal states. If, however, the component states are in the habit of obeying the common organization in respect of central functions, their relation towards the government of the whole may so nearly approach the federal tie that it may be called a confederation though not a federation, or to use the two significant German words, a *Staatenbund*, but not a *Bundesstaat*. A confederation is, therefore, to be distinguished from a federation, firstly in that there is no reliable sanction of sovereignty behind the action of the confederate government and secondly in that the relationship between the organization of states and of the common government is neither organic nor stable.

If then all composite states are not entitled to be classed as federal, and even such a close approach to it

**Duality of  
governmental  
organization**

as a confederation is to be excluded from the category of federal states, the question may well be asked as to what essential features render a composite state eligible for being described as a federation. These features appear to be two. Firstly, between the government of the Commonwealth and the governments of the parts there must be a division made of governmental functions and of the authority to deal with them. It is not material that the states even in respect of the so-called state functions should be entirely immune from central control; what is essential is that the local governments

should have a previous knowledge of the circumstances and manner in which they are subordinate to the common organization. It would indeed be unjustifiable to go so far as Sir John Seely,<sup>1</sup> and to say\* that between local self-government enjoyed by local bodies under a unitary government and the governmental independence possessed by the states in a federation there is no difference of kind but one only of degree. Such a view would be incorrect inasmuch as the local bodies have no assured field of independent action, their powers being dependent on the governments of the states. Local bodies in a unitary state and component states in a federation are alike in this, that both of them have in practice some powers of independent action free from the control of the government of the wider unit. But whereas in the case of the local bodies the limitations and security of the field delegated to them depend upon the authority of the government of the wider unit itself, in the case of the powers enjoyed by component states in a federation, they are necessarily secure from any intervention from the central government other than such as is provided for by the common instrument of government, which clothed both the central and the state governments with their respective powers. A secure enjoyment, by the component parts, of important powers of independent government would thus appear to be the first necessary requisite in a composite state to entitle it to be called federal. This would amount to a definite distribution of the functions of sovereignty. It would, however, not be correct to say on this ground that there is a division of sovereignty itself involved in a federal state. A state, federal or unitary, is a unit and the

supreme political power which compels obedience from citizens and constitutes the essence of the state, is also a unit. Wherever this supreme authority may be located in a given federation, it is beyond doubt the common sovereign for the central and the state governments. What is distributed in a federation, be it noted, is not political sovereignty, but the authority in practice to exercise the same. A duality of governmental organization and not of sovereignty is, therefore, the first and most important characteristic of a federation.

Looking at federal structure from the standpoint of the federal government it might be stated that it must be quite certain of the allegiance both of the governments of the component states and of the citizens of the federation so long as it is moving within the field created for it by the constitution. The component states have their assurance of liberty according to the law of the constitution, but the federal government must in its turn have adequate assurance of loyalty from the component states and the subjects. The dual position of citizens in a federation is but the counterpart of the state of divided expression of sovereignty. But it is of such vital constitutional significance that it requires to be specially emphasized. A citizen in a federal state has a twofold capacity. In his relation to his state he is amenable to laws made by the state government in respect of state functions. The civic position of people living in a country with a federal constitution may therefore vary in respect of state laws, as the states are supreme in the field created or allowed for them by the constitution. In respect, however, of the laws of the federal government in federal matters, all the people must have the same civic position, in matters of rights as of obligations.

**Common  
federal  
citizenship**

As without a definite division of governmental organization there can be no federation, so also without a common federal citizenship no federation, in the real sense of the term, can be said to have emerged. The component states, if they were independent before the emergence of the federation, in surrendering their control over certain functions of government, also surrender their claim to the allegiance of their population so far as the administration of these surrendered subjects is concerned. To the extent to which the central government, for the administration of the central subjects, has to depend on the allegiance of the state, and not directly of the subjects themselves, it is a confederate and not a federal form of government. The direct and uniform relation between all its citizens and the central government, is an integral feature of federation.

This, then, is the nearest approach to a definition of federation that we can safely attempt: that a federation is a form of government wherein for the purpose of administering some important governmental functions local governments are recognized as independent, free from any interference at the hands of the common government except in a manner predetermined by the constitution, and wherein the common government is constitutionally empowered to administer the field allocated to itself without any hindrance from the component states and with the direct support of the citizens. Apart from these two essential attributes of a federation there are some other features which are often though not universally or essentially associated with federalism. As almost all the bigger federations of history, with the possible exception of Canada, have been the outcome of a gradual and almost reluctant drawing together of

**Element of  
'pact' in a  
federal  
constitution**

states formerly in full enjoyment of their sovereign rights, there has always been an element of a pact associated with the term federation. In practice, this only serves to emphasize the feeling of independent identity entertained by the constituent states in the earlier stages of federal life. With the growth of a feeling of common devotion to the federation and the assertion of other centripetal tendencies, the so-called element of pact tends to recede into the background, as is the case today in the United States, but, significantly enough, not yet in Australia, where New South Wales is still chafing under the federal yoke. Even in other cases where federations emerge by devolution the feeling of provincial patriotism may for a time develop tendencies in the popular mind which would lead people to look upon the constitution in the light of a treaty. But, in such cases, these feelings are likely to be both weak and transient.

As the essence of federalism consists in the allocation of different governmental functions to local and central organizations, the security of the all important distribution is attempted to be enhanced by providing constitutional safeguards against mutual encroachment.

**Constitutional  
safeguards**

The example of the United States is very significant in this respect. The American constitution defines the federal functions so narrowly and in such terse words that one would have thought that the most complete safeguard was offered by that constitution to the states against encroachment by the federal government. Thanks, however, to the interpretations placed by the federal judiciary on the constitution, this safeguard has been found to be much less reliable than a literal interpretation of the constitution would suggest. Neither in

the United States nor anywhere else, have constitutional safeguards been able to withstand the change in the political consciousness of the people for whom the constitution is meant. And this is all to the good. It is, however, only natural that with a view to impart an air of solemnity to the distribution of powers, a special constitutional safeguard should be sought to be created at the outset. In one sense, such a safeguard does not exist in the case of Canada, as the Canadian constitution may be changed by the British Parliament through the simple process of legislation. But this provision itself serves as a safeguard. The constitution-amending authority, namely the British Parliament, lies outside both the Dominion and the provincial governments, and, in such matters, it acts only at the joint initiative of the provinces and the Dominion. Similar has been the fate of rigid constitutions.

That, in a federation, the original instrument of government, the fundamental law of the constitution should be treated with greater than ordinary respect is only natural. The attempt, however, to ensure such respect by providing an intricate and rigid process of constitutional amendment has proved a comparative failure. Federal constitutions have all been written; they have theoretically been endowed with varying degrees of rigidity; but, in practice, they have all shown enough resilience to pressure from changed views about national needs and constitutional requirements. This is the reason why the possession of either a written or a rigid constitution has not been here considered as an essential feature of the federal tie. Moreover, the partiality for written constitutions and for an extraordinary amending procedure is not limited to federal

**Rigid  
constitution**



states. Almost all modern states have deemed it desirable to have both these devices in their constitutions; and it may be noted that all federations possess these, in common with many unitary states, and that the security of the freedom of administration enjoyed by constituent states depends formally on the provisions for constitutional amendment contained in the federal constitutions.

One last yet important characteristic of federal structures may be mentioned. There has always been maintained a sort of balance between the authority of the central and that of the state governments. Whether residuary powers remained legally with the federal or the state government, in practice the central government as a claimant for every new governmental function has had to prove its claim by appeal to public opinion. This necessity has resulted in leaving to the state governments all functions in respect of which local interests are likely to be more unified and pronounced. This has secured a balance of authority between the central and provincial governments which is, if anything, even of greater significance for federal state-life than the rigidity of the division of functions.

In this introductory chapter, an attempt has been made to place before the readers the idea and the fact of federalism in their proper perspective.

**Outline of  
the treat-  
ment in the  
book**

In the succeeding chapters, we shall proceed to treat of the federal constitutions in a historical, analytical and comparative manner. We shall commence with a brief survey of early federal constitutions, such as existed in ancient and medieval times and preceded the formation of modern national states. An

outline of the historical evolution and present organization of the minor federations of today and the doubtful experiment at federation in Soviet Russia, will be dealt with in the next chapter. We shall then trace the course of events through which the five principal contemporary federations, viz., Switzerland, the United States of America, Germany, Canada and Australia, have evolved. Such a historical survey is calculated to throw much useful light on the influences that attend the federal process, and, in many cases, to explain the special peculiarities of the federal constitutions as they ultimately emerged. A critical examination of the executive, legislative and judicial machinery, in these federations, is undertaken in the next three chapters. This is followed by a study first of federal citizenship and then of the procedure provided by the various federal constitutions for their own amendment. The subject of federal finance is then dealt with in so far as it is necessary for the elucidation of the main theme of federalism. A few reflections regarding the future of federalism, based on the discussion and description in the book, have been attempted in the concluding chapter.

## CHAPTER II

### EARLY FEDERATIONS

**FEDERALISM** is a principle of reconciliation between two divergent tendencies, the widening range of social interests and the need of local or individual autonomy. The origin of the state is to be explained by a process which, in its essence, is only an instance of this very principle. The tie that binds the individual to the state is indeed an absolute and an absorbing tie. But the reconciliation that is established in a state between the individual self-sufficiency of the citizen and his allegiance to the state is, in a measure, federal in essence. As will be pointed out later on in this chapter, earlier forms of undeveloped state-life also partook of a federal character. In this sense, it can be said that federations are as universal and as old as the state itself. But the modern problem of federalism has arisen because of the limitations of unitary representative democracy. As outlined in the last chapter, these drawbacks are two, one of extent and the other of structure. The size of the populations and territories of modern states, of today and tomorrow, make it inexpedient that one central government should be saddled with the responsibility of looking after the interests of all parts, in all matters. Mere administrative expediency, if nothing else, demands the creation of local units enjoying powers of independent action in a specific field. The hesitation that is felt by a would-be component state about the security of its interests in a new central government, and which explains the constitutional reservation of a

**Political in-  
stinct essentially federal**

certain field for the action of the state governments, is to be accounted for as much by the local patriotism of the states as by this impossibility of efficiently administering all affairs from a centre. The unitary type has also been found to be inadequate as a field for the ideal of creative citizenship and deliberate obedience. These ideas which are today mainly critical in their import, however, point to a weakness of democratic machinery which can be set right only by the introduction of federalism. How to make self-rule effective over large areas and in a world of ever-expanding social interests is the problem that federalism will help to solve.

Modern federations have necessarily to be bigger in proportions and more elaborate in organization as compared with the older states. We shall hardly succeed in finding among earlier 'federations' any cut and dried parallels to modern situations. But the essential problem of federalism, that of finding an institutional means whereby the conflict between more than one identity of social interests could be provided for, is the same throughout history. Particularly in the politically conscious communities of ancient times the local and customary authority had such a compelling solemnity for the people and their governors, that its reconciliation with a warlike unity with other localities and states must have taxed their political ingenuity a good deal. The products of their political imagination and circumstances serve even today as good guides in solving many more difficulties than may be suspected at the outset.

It is interesting to notice that, in early times, federations have emerged as a result of unusual political back-

wardness as also of extraordinary political development. Wherever, as in ancient Greece or India, undeveloped political units, such as tribes and clans, lived on, while in their neighbourhood advanced political forms like the cities or principalities prevailed, they found their salvation in forming a federal union amongst themselves for the primary function of defence. Such unions, it may be asserted without exaggeration, must have been almost

Early federations the outcome both of political backwardness and advance

universal phenomena. The cities and principalities may in their turn have found it to their military or commercial or constitutional advantage to form wider units on a basis less intimate than that existing among the various parts of a unitary state. The attachment to local institutions and interests, as also mutual exclusiveness, are likely to have been more pronounced in the component states of the latter type of federations than among the former, and hence very often federations, in a more complete form, are traceable among tribes, clans, villages and cantons than among cities and principalities. As, however, tribes, cantons, and villages cannot claim to be called 'states' in the real sense of the term, their union also cannot serve as a normal example of federation. Out of developed political habits arises the aptitude, and out of widening social interests arises the need, for a genuine federation. Such instances are rare in early history.

#### ORIENTAL COUNTRIES

It can indeed be surmised that in their undeveloped form federations were as much a feature of the early history of India and China as of that of any other country which has shown evidence of possessing a steady

political instinct. It is almost certain that before the principedoms and kingdoms were established, the tribes,

villages or cantons were held together by a tie not far removed from the federal.

**China and  
India**

But there is hardly any recorded instance in China to suggest the existence of a federal state holding its own either against similar political units or against kingdoms. The trend of Chinese political development as of that of many other countries was in the direction of expansion by conquest and absorption. The Empire was an ideal state for the Chinese philosophers as for their warriors. We hear of dynastic rule in China from very early times, but no traces of a genuine federal organization of any importance are at all available. India by its geographical, economic and social aptitudes has always been rich in its social philosophy and public institutions. It will be unhistorical to claim that in all parts of India the course of political evolution was uniform. But there is at least one known instance<sup>1</sup> of a federal constitution of a semi-advanced type living a vigorous life even as late as the sixth century B.C., and serving as a model to other states and as a barrier to conquest.

Vaisâli, the Large City, is spoken of as the capital of the Licchavi 'rajas', fully enfranchised citizens, and the headquarters of the great and powerful Vajjian Confederacy. Vaisâli, it is surmised by scholars, must have been somewhere near Patna, and among the ancient peoples living around the Ganges and before the establishment of such powerful empires as that of Chandragupta and Asoka, a vigorous and free federal life was developed with Vaisâli as the federal capital. We know

**Vajjian  
Con-  
federacy**

<sup>1</sup> B. C. L. Law, *Some Kshatriya Tribes of Ancient India*.

more about the Licchavis than about any other peoples forming part of the Vajjian tribe. The constitution of the Licchavis was a republican one, every Licchavi being spoken of as a 'king'. Citizenship was, however, confined to members of the twelve confederate tribes, who together formed the Saṅgha or the confederation. Their united existence served the purpose that has been served by federations in other times and places, protection from the foreign conqueror; and the great Chanakya, author of the *Arthashastra* and minister of Chandragupta, bears testimony to the strength of these federations in resisting their conquest by ambitious kings. The Licchavis were only one clan from out of the Vajjians. The Vajji tribes met in periodical Assembly for discussing religion and politics. There were elected executive officers in the federation. The formal moving of a resolution and in some cases its three readings were provided for. Disputes were decided by votes, ballot-boxes and voting tickets being in evidence. Voting by proxy was allowed. The chief magistrate, called the Nayaka, was annually elected by the Assembly; so were the general, the treasurer and the vice-president elected. Records of meetings were kept and powers of criminal justice in important cases were administered by the Assembly, but the punishments were executed by the federal magistracy after further inquiry. The principle of the Licchavi union was thus wider than merely a deliberative one in military and religious matters, as the federal government had even a judicial organization. Though our knowledge of the early political institutions of India is still very limited it can be claimed with justification that the Vajjian confederacy was as advanced a type of federalism as is to be found in the ancient history of any country, with the exception

of the Achaean league in Greece, which was a union of states and not merely of tribes.

If we look at the emergence of federalism from the standpoint of assured local liberties in a big state, it may be of some interest to record that according to the ancient Hindu theory of government, the duty of the king was to uphold all local customs and institutions. Thus a good deal of independent action was possible for the organized villages and guilds. As indeed these had no share in the shaping of the central government, they cannot be said to have stood in the same position as that of the constituent states in a commonwealth. The respect for local identity of interests and corresponding delimitation of political authority are however significant.

#### GREEK FEDERALISM

The prevailing tone of Greek political genius was one of isolation. To a cultured Greek, and indeed even to such a gifted pair of political philosophers as Plato and Aristotle, the ideal of statehood did not comprise a bigger unit than a city. The Greek political ideal was one of intensive rather than extensive import. The natural trend of political organization did not, therefore, incline towards the formation of those alliances out of which arises a federal state. It may be that the geographical peculiarities of Greece, which enable small fortified places to hold their own against an assailant of comparable strength, encouraged such a tendency towards isolation. It is, however, remarkable that, even though the Greeks had their religious gatherings, the Amphictyonies, which were based on a common ethnic, linguistic

**Political  
genius of  
Greece  
essentially  
exclusive**



and religious tie and which were utilized for such purposes as sports, still these institutions did not lead to any more perfect political union than a general military alliance. This is a very illuminating commentary on the essentially exclusive nature of the Greek conception of city-life as the perfection of political development. It is only when some internal tyrant, or an external foe, like the Macedonian or the Persian king, threatens the liberties of the whole of the Hellenic world that with great difficulty the Greek cities are brought to act together. Even such unions, moreover, were loose and transient. In some cases, as in that of the Athenian Confederation and the Peloponnesian League, these unions were utilized for a while by a dominant city, such as Athens, Sparta or Thebes, for establishing its supremacy over the other members and thus adding to the prestige of the leading state. Neither the physical nor the political characteristics of Greece were favourable to the development of a genuine federal tie, which depends on a respect for individuality and a breadth of outlook which were alien to the Greek mind. When in the closing years of the Greek period a tendency towards a wider state-life becomes visible, the rise of the powerful Roman state made its development an impossibility.

The world has to thank Greece for a number of political lessons. But it is doubtful whether federalism is one of them. It is indeed true that we find in Greek history a number of instances of the emergence of the federal tie in its undeveloped form. But it is nowhere of a sustained and vigorous character. Most obvious commercial and political advantages arising out of a federal union are spurned in favour of a precarious

**Federalism  
in Ancient  
Greece**

independence. The following description of the working of a few of the most important 'federations' in ancient Greece is calculated to help in appraising the significance of these remarks.

The earliest<sup>1</sup> union of Thessaly was attained by the voluntary subjection of the aristocracies of her towns to a king of their own choosing. The Thessaly monarchy very soon gave place to some sort of a federal council, which was the earliest representative body in Greece. The rule of the nobles in the various states and their constant feuds weakened the union a good deal. An attempt was made to improve this state of things by the introduction of the office of the *tegas*, who was elected by the states as their chief military commander. This system of government, however, had the possibilities of development in the direction of tyrannies, and it was as a result of these that in the long run Thessaly became a subject of Macedon, whose interference it had sought in pursuit of internal intrigues. It is interesting to notice that, both under the Macedonian and, later on, Roman domination, the skeleton of the federal organization was maintained without the political independence. It will be observed that the development of federal institutions in Thessaly was not the outcome of a progressive and expanding political consciousness, but was a result of the pressing need for external defence felt by a few ill-developed city states mostly oligarchic in composition. It also illustrates the difficulty, if not the impossibility, of holding together a federation on a basis other than that of a democratic constitution.

It was out of a religious amphictyony that the Bœotian

<sup>1</sup> A. H. J. Greenidge, *Handbook of Greek Constitutional History*.

federation emerged. The titular headship of Bœotia was always on this account placed in a non-political office-holder. Thebes, connected with a few states by natural self-interest, brought the others under its influence by coercion, and maintained throughout a position of dominance in the league so established. The league was divided into seven federal units. The supreme controlling power was vested in a large council, which was composed of four smaller Boule. These minor councils were doubtless regional bodies, controlling the four departments of Bœotia, in respect presumably of federal matters. Votes on federal matters were probably taken separately in these departments and a majority of the departmental votes decided every issue. The chief executive officials were the Bœotarchs, eleven or thirteen in number, of whom two were Theban, the rest being appointed by the other federal divisions. During their year of office they were the guiding authority in political and military matters. Their actions had to be ratified by the councils of the four departments of the federations. They were generals in the field, the supreme command going by turn among the several Bœotarchs. When Thebes, the leader, became democratic, the political constitutions of its associates adopted the same model. This principle of free government, however, proved out of keeping with the tradition of the league. The domination by the Theban Assembly was throughout evident. There were now seven Bœotarchs who decided questions by the majority of votes, and collectively commanded the army in the field. The confederacy virtually fell with the subjection of Thebes to Macedon in 333 B.C. The dominant position held by Thebes in the league explains the rise as also the fall of this federation. The

existence of the four departmental councils is very interesting, and suggests one remedy to overcome the difficulties of making a direct democracy workable over a large area. The statutory representation of Thebes in the federal executive is also remarkable. With all these imperfect features, however, it must be admitted that the organization of the Bœotian League was much more elaborate and stable than that of any of its predecessors.

The Aetolian and Achaean leagues were the outcome of a widening feeling of nationality, and in this sense they reflect the developed political consciousness of their members. Under pressure of foreign enemies and internal tyrants, the city-states of Greece, even though Sparta and Athens held aloof, began to draw together into a close federal union. In the event it was to be proved that even these, the most advanced forms of Greek federalism, were incomplete in that they were based on the annexationist policy of Achaea, and something worse from Aetolia. The Aetolians were really a backward portion of the Hellenic race still living in a tribal state, the tribes holding together by a tie stronger than the federal but weaker than the one in a city state. Though, therefore, federation was based on a national idea it was not a result of experience of a city-life, but a preliminary to the same. The Aetolians as a league had dealings with foreign powers, and even consented sometimes to partition Greek territory with them. This is an index of their undeveloped rather than developed political consciousness. The league had, within its circle of influence, different states connected with it by different degrees of allegiance, thus vitiating the federal character of the formation, which must be based on a

sense of equality and uniform status among members. The constitution of the Aetolian League was not only democratic but representative. The Senate was formed by electing one member from each commune, large or small, but every individual citizen of Aetolia had a right to attend and speak at meetings of the federal assembly. The senate or the council was thus both an executive and a preparatory body. The Assembly met at least once a year for the election of magistrates. The president of the league, who was annually elected and was the chief general, could not, however, give his opinion in the assembly on a question of peace or war. There was a separate board for the revision of laws and the safe custody of documents. The enjoyment of a common federal citizenship by all Aetolians, the equality in voting power given to the states, the position of the chief general and the elaborate organization of the federal machinery are all interesting features about the Aetolian League. No less so are the position and powers of the executive council.

In the Achaean League we trace the high water mark of Greek federalism. The twelve cities of Achaea always held their own while Athens and Sparta warred with one another, without producing much effect on the smooth course of the Achaean politics, which were of a mildly democratic character. This democratic federation seems to have existed till the Macedonian conquest of Greece. After a life of dependence extending over a few years, when later Macedonian kings began to confirm their rule by the creation of local tyrants, the Achaean cities began gradually to reorganize themselves to meet this imminent danger. This happened somewhere near 280 B.C. The personal influence of men of genius played a large

**The Achaean League**

part in the formation of this league. Sicyon, Corinth, Megara—such cities were brought in by the influence of these men. In 234 B.C. Lydiadis voluntarily laid down his authority as the tyrant of Megalopolis and joined the league. The whole of Arcadia and Argos followed his example. In making common cause with Macedon against Sparta and the Aetolian League the Achæan League again gave up its independence. Indeed in 207 B.C., Sparta itself was made to join, but by this time the pressure from Rome had become irresistible.

The Achæan League possessed a constitution of a strictly federal character, the constituent states being sovereign in all matters distinct from the common purposes for which the federation was formed, and the central government exercising no interference with their internal laws or constitutions. The constitution of the states was not necessarily uniform, though, from an irresistible tendency towards uniformity such a result had gradually followed. An interchange of civil rights among the citizens of the several states had also come about by pressure of practical considerations rather than by prescription of law. The states surrendered their foreign relations in their entirety to the federal government. The financial burdens of the federation were distributed among the members, and the federal government interfered if it found its own contribution in jeopardy. All the military forces were under the command of the federal government, which was also the exclusive representative of the states at international law. The federal government was strong enough to inflict penalties on recalcitrant members in extreme cases. Nominally the organization of the league was democratic, but as only the few rich could attend the primary federal assembly

**Most perfect  
of Greek  
federations**

it had an air of oligarchy about its working. This Assembly met twice a year and could be summoned oftener by the magistrates. The magistrates and the Boule thus became the chief centres of authority. The Boule was most probably a small representative body where votes were taken by cities. The members of the council were not merely delegates but representatives in the real sense of the word. The capital was at a later stage shifted from city to city in turn. The chief general was assisted by ten purely civil ministers. Unlike the Aetolian general the Achaean general was an active member and leader of the Assembly. He could be called to account after the lapse of his year of office and could not be reelected for the next consecutive year. Usually the ministers belonged to the same persuasion as the general, as they were elected by the same assembly. With the exception of the alliance contracted by the Achaean League with Macedon against Sparta it might be claimed that the league was a full-fledged federation, really emerging out of expanding political interests. The division of functions and of corresponding governmental authority which is the essence of true federalism was adequately provided for in the Achaean constitution. That the internal constitution of the states was not uniform by legal necessity, but tended to be so in practice, is only to be expected. The voluntary abdication of tyrants to enable their cities to join the federation is impressive. The emergence of common rights of citizenship in respect of civil privileges speaks of the advanced political unity which lay behind the federal structure. The provision of independent federal finance and adequate military control creates for the federal government in Achaëa an almost unique position in early history. The democratic

constitution of the federal executive is also very instructive. In sum, imperfect as it is, the Achaean League both in respect of the sense of developed nationalism as also that of federal structure, stands out as the most remarkable example of its type in early history.

The Lycian League in Asia Minor had some peculiarities which deserve notice. It was a union developed by

**Federation in Asia Minor** a non-Hellenic people. Twenty-three Lycian cities met in a federal assembly in any suitable place, thus emphasising again the need of equality even in respect of the seat of the federal government. The voting power of the cities varied from three to one according to their size. Taxes and public burdens were shared in the same proportion as voting power. The chief general, the magistrates, and the federal judiciary were elected at annual meetings. The judges and magistrates from each state were elected in proportion to the voting qualification and the financial burdens. This close observance of proportionate representation in all federal matters is contrary to the strict federal principle, which should recognize the equality of the states somewhere. But in the absence of any system of primary federations, such an arrangement of proportionate representation is the only one which is calculated to ensure the necessary responsibility in the decisions of a federal government composed of units of very unequal sizes. Though direct democracy was the rule in ancient Greece, still both in the city and federal governments the principle of representation was used on important occasions. The distinction, between states and their populations as distinct constituents of the federation, which is now provided for by having one body each wherein the two principles are severally



honoured, was too elaborate for the ingenuity of the ancient Greek, who hovered between the Lycian practice of proportionate, and the general practice of equal representation.

### FEDERALISM IN ITALY

The causes that universally make for federalism were present in the case of Italy as well. 'A number of small neighbouring communities, politically independent, but closely allied in blood, language and religion, retained, among whatever amount of local differences, some general sense of national unity; the feeling of brotherhood was kept by common sacrifices in a common temple, by occasional common deliberations on matters of common interest, and by occasional help given to one another when threatened by foreign enemies. Such a group of kindred towns or districts naturally forms a religious amphictyony; the religious amphictyony easily grows into a lax political league, and the lax political league may, if fortune favours, easily grow into a regular federal government.'<sup>1</sup> There are numerous recorded instances of this process in the early history of Italy, and indeed of such other countries as Spain and Gaul. Of the Italian Leagues three are of outstanding importance, viz., Etruria, Latium, and Samnium. It is indeed true that with the exception of the Latium League none approached the federal model to any appreciable extent. But an outline of the two other leagues is calculated to emphasize a type of union which may be said to be prevalent in many parts of Europe in those days.

<sup>1</sup> Freeman, *History of Federal Government in Greece and Italy*.

In Etruria there were twelve cities which, being independent commonwealths, were united by a federal tie. There is reason to suspect that some of these cities were themselves a kind of confederation among smaller cities, or had smaller cities attached to them as de-

pendencies. There was complete equality among states, and their meetings were held in a place of religious sanctuary. It is more than probable that this federation developed out of a religious amphictyony, and that regular meetings for religious purposes continued to be held even after the formation of the league. There was an authority which summoned these meetings either at the request of some cities or at that of some foreign powers. The constitution seems to have been aristocratic, and even a federal king is spoken of, though much reliance cannot be placed on this evidence. It is probable that in some of the states monarchy prevailed, though it was disliked by the other states who were aristocratic. War and peace were declared by the federal government, and its decisions were binding on the constituent states. But when no war was actually on, it was open to states to have their own military and diplomatic relations. Where the federation as a whole refused to take up the cause of some state, that one by itself or with such of the other members as chose to support it, could fight out its own claims. The federal tie in this case was, therefore, a very lax one. Less is known about the League of Samnium, than about the Etruscan League. That they had a federal tie and an Emperor during war is certain. Capua, the important Samnite city, was out of the league. This established a balance amongst the members of the league, and made for a smooth career, unlike the case of Thebes in relation to

Bœotia. But the civilizing influence of a progressive leader was also thereby denied. The Samnite League resisted the pressure of Imperial Rome with a vigour that speaks volumes for the strength of its cohesion at least in matters of foreign affairs.

The league of the thirty cities of Latium has the best claims to be considered as an example of genuine federation in Italy. The tie that bound these cities together was much stronger than that of the states in Etruria. The Latin League had common religious and political meetings, and in wartime at least, a common chief with the title of Dictator. The number of states must have varied, and Rome's position in relation to the league must always have been undecided, savouring at different times of the role of an absolute mistress, a federal head, an equal ally, or the mother-state which had incorporated the other cities in its citizenship. The league was dissolved and reformed many times before its final dissolution after the great war with Rome in 334 B.C. Even while Rome was a member of the league, it held a position even more lordly than that of Thebes in relation to the Bœotian League. The demand of the Latins that they should be admitted to the Roman franchise suggests the validity of the theory that Rome was of the same nationality as the league, indeed in earlier times the league's outpost against the Etruscans. When Rome ultimately conquered the thirty cities of the league, it dissolved the federal tie that had held the league together, and it admitted the several cities as isolated units to various degrees of its own citizenship.

It will be seen from this description of the fortunes and features of the three most important federations in

early Italian history, that though there were in Italy federal institutions of a fairly developed type, such as the Latin League, the career of Rome as a conqueror was too dominant to suffer any independent political life in such geographical and ethnic proximity. These instances, however, exhibit some directions of federal development which might be noted. The extension of the principle of federation to the constituent states themselves, as in the Etruscan League, though not unique, is very noteworthy. The difficulty of securing a balance amongst constituent states which differ very widely in their size can be met in no other satisfactory way than the one here indicated. That the form of government prevailing in the constituent commonwealths should, in the interest of solidarity, be uniform is also suggested by the same example, though indeed the very presence of constituent states having different forms of government goes to show that such a uniformity is not indispensable. The long opposition which the Samnite League offered to the Roman aggression may be taken as a refutation of the criticism that a federal government is a weaker administration than a unitary.

All-  
absorbing  
Rome

#### MEDIEVAL UNIONS

The medieval ages constitute a period of dispersed sovereignty and feudal organization. When the movement for political consolidation again started it took a turn towards the formation of national states. While this process was working itself out over a large portion of the continent of Europe local conditions in various other parts brought into being some forms of federal unions. The German confederation and the federation of the United

Medieval  
period

Provinces of the Netherlands are two prominent examples. Both these, however, proved short-lived, though at a later date Germany was reorganized on a federal basis. The Swiss Confederation, one of the most perfect forms of federation, dates from an even earlier time. It has lived on to form a very prosperous federation of today, whose story along with that of the other four major federations will be told in the chapter following. The short-lived and imperfect federal experiments of medieval Germany and Holland possessed a few important points of interest to which attention may here be drawn.

#### THE GERMAN CONFEDERATION

The outbreak of the French Revolution suddenly checked the career of consolidation and aggrandizement that had been pursued by the Hohenzollerns in Prussia. Napoleon in suppressing some of the smaller principalities in Germany and establishing the confederation of the Rhine really gave to the German princes their first opportunity to act together. After the defeat of Napoleon, the Treaty of Vienna reorganized Germany into a loose union. The states were to be independent in all matters excepting those affecting internal and external peace. The only constituted body of the Confederation was the Diet which consisted of the delegates of the various states who voted as per instructions from their respective governments.<sup>1</sup> It had power to declare war and to make peace, to organize the federal army, to make laws for the purpose of enacting the constitution, and to decide disputes between the states, but it had no officers of its own and had to act through state agency. In case a state refused to obey, the so-called federal execution,

<sup>1</sup> A. L. Lowell, *Governments and Parties in Continental Europe.*

coercion with the help of other states, had to be attempted. The procedure of the Diet was complicated. For ordinary matters it acted by sections called *curiae*, when the eleven largest states had one vote apiece, the other twenty-eight being combined into six groups each having a single vote. For constitutional questions, on the other hand, and those relating to peace and war, the Diet proceeded *in plenum*, each of the smaller states having one vote, and the fourteen largest ones having two, three and four apiece according to their size. These votes were not exactly proportionate to population, but they constituted a distinct recognition of the principle of inequality of rights in the federation. Votes, moreover, did not by themselves determine the influence exercised by members on the federal government. Austria, which was the permanent president, and Prussia, which was the permanent vice-president, exercised a decisive influence on the decisions of the league. When these two powers disagreed, Austria usually carried the day. As will be easily conceded, this Diet was by no means a federation, as sovereignty in common functions did not effectively pass out of the hands of the component states, nor did the central organization possess any independent executive agency or finance. But according to a strict interpretation of the process of 'federal execution', it can be claimed that the union was a federation, not of the peoples but of the Governments of the states. Herein, however, we come up against the difficulty of inequality, and hence we may safely conclude that the German Confederation was at best an anticipation or a preparation for future federation among the German states. The ambassadorial character of the Diet and the most important role played by Austria and Prussia are, however, very notable points. As will

be more obvious from the account of federal evolution contained in a later chapter, the German confederation was a typical case of an incomplete form of federalism, the Confederation, preceding the emergence of the more completely organized federation of a later day, the German Empire and Republic, in this case.

### THE DUTCH UNION

The Union that existed for a period of over two centuries between the provinces of the Lowlands furnishes another interesting instance of medieval federalism. The Netherlands were parts of the Holy Roman Empire and exercised in practice almost complete local autonomy. Under the pressure,<sup>1</sup> however, of the ambitious and fanatical designs of Philip of Spain, the Provinces had to overcome their feelings of local patriotism and form into a union under the elective but in practice hereditary leadership of the House of Orange. The Union was inaugurated in 1576 by an alliance between Holland and Zeeland, which was later on joined by the other fifteen provinces. Though the titular authority of the Spanish king was recognized, the Union claimed to act as a unit for military and commercial purposes. This claim was conceded by Philip himself. But the internal divisions and jealousies among the various interests in the United Provinces gave a handle to the intrigues of European and particularly Austrian diplomats. Mainly under the leading strings of Alexander of Parma, several states seceded from the Union in 1579 and set up their own union by the name of the 'Union of Arras'. The Prince of Orange took this opportunity to organize the remaining five states by a

**The Dutch  
Union**

<sup>1</sup> J. A. R. Marriott, *Mechanism of the Modern State*.

closer tie of union than was present in the bigger league. This Union was fully organized for legislative and executive purposes and claimed to be united, and independent in international relations. The components of central organizations were, however, the various states, and the individual citizens had no *locus standi* in relation to the central government. In all important matters the unanimous decision of all the five, later on seven, states was necessary. In spite of such a rigid and cumbrous constitution this union continued to hold together and to flourish as a colonizing, trading and naval power for nearly two centuries. This was due, over and above the conditions of European powers during that period and the inborn enterprise of the inhabitants of the provinces, to the strong leadership of the House of Orange, and to the predominant position held by Holland in the Union, and by the powerful burgh of Amsterdam in Holland. In a large measure the history of the United Provinces during its career of these two centuries is the history of Orange and Amsterdam. The long sway of this power naturally led to very deep-seated antagonism. For a time the predominance of Orange was replaced by the rule of De Witt, the leader of the city-democracies. With the murder of De Witt in 1673, the House of Orange came into its own. As there never was any real bond of unity and corporate action among the various provinces and as the House of Orange and Holland had all along acted in the name of the Union, later tendencies, in a time when the national states were emerging in other European countries, were towards the development of a constitutional monarchy in the Dutch provinces.

It will be seen from this sketch of early and medieval attempts at federation that though full-fledged



federations were an exception in pre-modern times still a number of problems of present-day federalism were anticipated. The equality of status among the component states, common federal citizenship, proportionate representation, need of an independent capital, the difficulty of adjusting the position of small states, all these problems have been tackled in diverse ways and with varying degrees of success. The traces of early federations were wiped out first by all-absorbing Rome, and then by the rise of national states. Most of the period commencing from the sixteenth century and ending with the fourth quarter of the nineteenth is occupied with this process of national formation. The peculiarities of Swiss history and the incidents of British colonial policy explain the recrudescence of the federal movement in the very hour of the triumph of national unitary states.

## CHAPTER III

### MINOR FEDERATIONS AND RUSSIA

EXCLUDING Russia, which is in a class by itself, there are at present nine federations. Of these five, namely Switzerland, U.S.A., Germany, Canada and Australia, attract general notice, and may be spoken of as major federations of today. In respect of their population and territorial extent, some at least among these compare very unfavourably with the so-called minor federations, which class includes Argentine, Brazil, Mexico, and Venezuela. This fact is well illustrated by the comparative table of population and extent given below.

FEDERATION	AREA (Sq. Miles)	POPULATION
1. Argentine ...	1,153,119	10,646,814
2. Brazil ...	3,275,510	39,103,856
3. Mexico ...	767,198	14,334,780
4. Venezuela ...	393,874	3,026,878
5. Russia (U.S.S.R.) ...	8,241,910	147,013,609
6. U. S. A. ...	2,973,776	120,013,000
7. Australia ..	2,974,581	6,373,219
8. Canada ...	3,684,723	9,786,800
9. Switzerland ...	15,940	4,018,500
10. Germany ...	181,723	63,178,619
11. India with states, (for comparison.)	1,805,332	318,942,480

The main justification for the comparative insignificance into which the study of the South- and Mid-American Federations has fallen, must be found in the fact that their constitutions have been deliberately copied from the United States model and thus offer little of instructive variety. The absence of any steady, peaceful and progressive political life in them, at least till a very recent date, has also caused a diversion from their constitutional features towards the weird and picturesque career of some amongst them. The accession to political strength arising from even a doubtful affiliation to such a dominant world-power as Great Britain—as in Canada and Australia—is also lacking in the minor American federations. In spite of these discouraging factors, it may well be urged that a brief study of the formation and constitutions of these virile and young states is calculated to throw some useful light on many aspects of federalism.

The case of Russia is unique. It is the very reverse of a minor state. In point of extent, population, and economic and political importance it cannot be said to lag behind any other state in the world. All the same its public organization is based on political and social principles which are so fundamentally different from those on which the capitalist states, large and small, are based, that no useful purpose is going to be served by penetrating too closely into the details of Soviet administration. But the Union of Socialist Soviet Republics is professedly a federation, and as such deserves some consideration at the hands of a student of federalism. That the Soviet state is in a transitional stage, and that it is based altogether on a unique philosophy only lend special interest to the study. That study will have to be necessarily sketchy, both

because of the transitional character of the constitution, and its pronounced divergence from the essential requirements of a real federation.

### ARGENTINE

The origins of the Argentine constitution go as far back as 1516, in which year the Spanish adventurers first discovered the land, which they wrongly imagined to be a land of silver and gold, --hence the name Argentina. For exactly three centuries after its first occupation by Europeans, Argentine was under the supremacy of Spain. Its rich and extensive grass lands had marked it out from the start as a veritable heaven for cattle-rearing, but from 1581 it began to be occupied by enthusiastic colonists also, who from their base at Buenos Aires began to develop the almost unlimited agricultural possibilities of the country. Spain's economic policy, in relation to its colonies, was notoriously restrictive, and the political administration was regulated so as to promote the economic ends. The country was divided into more or less independent captaincies, owing allegiance to Spain through the Captain General and the Viceroy. In the wake of continued habitation by Spaniards a good deal of blood-mixture had taken place. The youth of the colonies had, in many cases, availed itself of European education, and the significance of such events as the American and the French revolutions was not entirely lost upon it. When, therefore, Spain was invaded and reduced by Napoleon, the people of Argentine felt themselves justified in declaring their own independence. A Constituent Assembly met in 1816, which attempted in vain to formulate a satisfactory constitution. The domineering ambitions of Buenos Aires were resented by

the provinces, and it was not till 1826 that a constitution was promulgated. This constitution was of a centralized type, and led to actual civil war between the provinces on the one hand and the people of the capital city on the other. The most striking feature of this period of turmoil was the rise to eminence of an unscrupulous and almost uncivilized tyrant, who literally slaughtered all the known and suspected supporters of unitary government. By such methods the obstinacy of Buenos Aires was indeed overcome, but they gave birth to many more pressing political evils. With the help of foreign powers Urquiza, the lieutenant of the tyrant Rosas, at last defeated his master in 1852 and convened a Constituent Assembly. This body adopted a federal constitution on the basis of the United States constitution, and with a few alterations since made, it continues to be the fundamental law of the Argentine Republic to the present day. The struggle between Buenos Aires and the other provinces continued to disturb the peaceful progress of the constitution till 1874, when the capital city was formed into a separate federal district as the seat of the federation.

There are in all fourteen provinces, ten territories and one federal district in Argentina. Its federal institutions are organized as follows:—

*Executive.*—The president of the republic is elected by electors in every state, who are themselves elected for that purpose by the primary voters. The number of electors in every state is double the number of senators and deputies chosen from the state. The period of office of the president is six years, and he cannot offer himself as a candidate at the next consecutive presidential election. Candidates for the position of the president must be born subjects of Argentine and must be Roman

Catholics. The president, for the time being, is also the commander-in-chief of the fighting forces. He has all the patronage of important governmental offices. The executive administration is in the hands of eight ministers appointed by the president and responsible to him. A vice-president similarly elected is president of the upper federal chamber, the Senate.

The executives of states are similarly organized, and are ordinarily supreme in their own field. But the Constitution provides for the suspension and supersession of local authority by the federal executive in cases of extreme misgovernment. This provision has been often utilized, and though their constitution is generally based on the United States model, the state governments in Argentine have much less liberty from the central government than their compeers in the great American federation.

*Legislature.*—The legislative authority of the federation is vested in a Congress, composed of two houses. The upper house is the Senate, which is composed of thirty members in all, two each from the fourteen constituent states and one federal district. Senators are elected by the state legislatures, for a period of nine years, one-third retiring after every three years. Senators must be at least thirty years of age and must have been citizens for at least six years before election. The Chamber of Deputies, which is the popular house is at present composed of 158 members, on the basis of one deputy for every 33,000 of the population. The deputies are elected by universal male suffrage. Deputies must be at least twenty-five years of age, and must have been citizens for four years before election. The normal term of office of the Chamber is four years, one half retiring after every two years. The sessions

of the Congress are held from 1st of May to 30th of September in every year, unless otherwise provided by law. Members of the legislature receive an yearly payment of 18,000 paper pasos (1£=11 pasos).

The provinces have their own constitutions almost on parallel lines. In the federal district, voting at elections is made compulsory by law, under penalty of a fine.

*Judiciary.*—There is a separate judicial organization for the federation as distinct from the state judiciaries. Over and above the supreme federal court, there are federal courts in each one of the five judicial provinces into which the whole territory is divided. Besides, there is at least one district federal judge in every state. All the federal judges are appointed for life by the president of the republic, with the concurrence of the Senate. The states have their own system of courts, with a supreme court at the head.

The strong position occupied by the federal government in relation to the constituent states, and the provision for the indirect election of the Senate, through the state legislatures, are special features to be noted about the Argentine Republic.

### BRAZIL

It was in the closing year of the 15th century that Brazil was discovered by Portuguese seamen. For purposes of administration the Portuguese government in 1532 divided Brazil into fifteen captaincies with extensive powers of local autonomy in each. This policy of decentralization was, however, reversed in 1549 when a centralized administration under the king's representative was inaugurated. Local feeling and administrative separateness in the old captaincies did not easily vanish, and it was only in the second

half of the 18th century that all the rights of the captaincies were finally abolished. When Portugal was invaded by Napoleon in 1807, its king Don Juan sought refuge in his trans-Atlantic possessions, and made Rio de Janeiro his new capital. This circumstance raised the colony to the status of a kingdom. Don Juan took some steps to improve the system of administration by appointing a council of ministers and by providing for a council of state. These steps had by no means satisfied the now politically conscious Brazilians. But the colonial career of Don Juan was cut short in 1821, when he hurried to Portugal to try and stem the tide of popular revolution that had broken out in the home country. The Portuguese Assembly, the Cortes, then resolved on reversing the process of constitutional amelioration that had commenced in Brazil, and to hold it as a royal possession and no more. This step was strenuously and almost wildly opposed in the colony, which under the leadership of Don Pedro, the son of Don Juan, who had been left behind as the viceroy, proclaimed its independence of Portugal and crowned Pedro as the constitutional Emperor. Even Portugal formally recognized the independence of Brazil in 1825. Don Pedro had, however, no intention of playing the role of a constitutional sovereign and his reactionary policy provoked such insistent and pronounced opposition that he had to abdicate in favour of his minor son, Pedro II, in 1831. The period of regency was one of internal dissensions and turmoil. The provinces were claiming a big measure of independence from the central government and often supporting their claims by force. In 1834 an attempt was made to recognize these feelings of local independence by introducing in the constitution a measure of decentralization. The



provincial governments were to be reorganized as separate units with provincial legislative assemblies. In 1840 Pedro II was declared as of age, and then followed a period of well-nigh half a century, in which economic and political progress marked the fortunes of the country. At the end of this period, however, various and powerful forces of discontent combined to overthrow the long and relatively peaceful regime. Slave-owners who were discontented at the King's measures regarding the abolition first of the slave-trade and then of slavery, the clergy who were chagrined at the extinction of many of the privileges that they had enjoyed in the earlier periods of colonial administration, the militarists who found that their game of having the executive under their thumb was gone, and the avowed republicans who believed in nothing short of a full democracy, all these forces of opposition united in support of a revolt that took place in 1889, and brought about the abdication of the aged monarch. The Constituent Assembly that met in 1891, declared Brazil a republic, and adopted a federal constitution of the American type. In spite of the formal declaration of democracy, autocracies of some type have been the rule in Brazilian politics, the course of which is almost a chronic alternation between financial crises and militarist revolts.

The United States of Brazil consist of twenty states, almost identical with the old provinces, one federal district, and the territory of Acre. The powers of the federal government are specifically outlined by the constitution, and the states are the custodians of all residuary powers. The constitution lays down that the national government is forbidden to interfere in the states except to repel invasion, to maintain a republican form of government, to enforce the execution of federal

laws, and to reestablish order at the request of the states themselves. Recent tendencies are, however, in the direction of strengthening the control of the central government. A constitutional amendment of 1926 has considerably expanded the right of federal intervention, as for instance in respect of financial incompetence and maladministration.

*Executive.*—The executive authority of the federation is vested in the president, elected for a term of four years, by direct popular vote. An absolute majority is necessary to secure his election. Candidates for the position of the president must not be relatives of the sitting president and must be native-born Brazilians of at least thirty-five years of age. Reelection for a consecutive period is disallowed. A vice-president who is similarly elected becomes the president if the presidential incumbent is incapacitated in the last two years of his regime; otherwise a fresh election is held. The president appoints seven ministers to carry on the administration under his control. The power to make appointments and to command the armed forces vests in the president himself. The intervention in state governments according to the constitution and the declaration of a state of siege are also functions which are virtually left to the president. He can veto any bill passed by the Congress. In keeping with the strict interpretation of the theory of separation of powers, the ministers cannot appear in any of the legislative chambers. Communication between the legislature and the executive can take place only by means of a letter or by means of an interview between a commission appointed by the Congress on the one hand and the ministers on the other.

*Legislature.*—The national Congress is composed of two houses, a Senate and a Chamber of Deputies. Both

are elected by direct universal suffrage. The Senate consists of 63 members, three each from the twenty states and one federal district. The senator's legal period of office lasts for nine years, one-third retiring at the end of every three years. The number of deputies is at present 212, on the basis of one member for every 70,000 of the population. The term of office of the Chamber of Deputies is three years. In the electoral law regarding the Chamber of Deputies provision is made for proportional representation. Every state, whatever its population, must have at least four members in the Chamber. The constitution has placed the power of initiating legislation about the following subjects in the Chamber of Deputies: finance, strength of the fighting forces, and censure of the executive. Members of the Legislature receive an yearly allowance. The Congress meets on the third of May every year without formal summoning, and sits for four months, unless sooner prorogued. Members cannot accept any office under the Government other than military and diplomatic. Even in the case of such offices, if the duties connected with them are likely to conflict with the obligations of a member of Congress, previous sanction of the Chamber concerned is necessary for acceptance. Members of Congress are also precluded from becoming ministers in the state governments. Senators must have been citizens of the republic for at least six years, and be at least thirty-five years of age. Deputies must have been citizens for at least four years. The Senate is presided over by a vice-president elected in the same way as the president.

*Judiciary.*—The Supreme Federal Tribunal consists of 15 judges appointed for life by the president, with the consent of the Senate. There are district federal courts

in each of the 21 units of the federation. The Supreme Court is competent to pass judgment on the constitutionality of federal and state laws.

Local governments are required according to the constitution to be republican in form, and they must also recognize the principle of separation of powers. In practice, however, except in the populous and progressive states, a form of administration hardly to be distinguished from the feudal regime prevails. Even the municipalities in such states are under strict bureaucratic control. In respect of local magistracies, however, the constitution specially lays down that they must be elective and magistrates must not be removed except by judicial process.

It will be observed from this description of the Brazilian constitution, that the head of the federal executive in Brazil is legally empowered to traverse, and practically rules over, a much wider field than the American president. His independence of the Congress in matters of appointments and his powers of intervention in local affairs are vastly superior to those of the president in the United States. The relatively strong position created for the lower chamber in controlling the financial, military and general administration is also noteworthy. Equally remarkable are the provisions regarding the requirement of an absolute majority for presidential election, re-election of president within the first two years, minority representation, and conditional permission given to legislators to hold military and diplomatic offices. The fact that in practice in many of the states the so-called republican form works out as a feudal and bureaucratic administration throws useful light on conditions in Brazil and on the need of correlation between political forms and political facts.

## MEXICO

Mexico was first occupied by the Spaniards in 1520 and for three centuries afterwards it continued to be a colony of Spain. Mexico was a captaincy, or sub-vice-royalty, and was divided into provinces, with a governor at the head of each who was responsible to the king through the captain and viceroy. In Mexico and in the provinces there was an institution known as the *audiencia*, which was mainly a judicial body, but also performed some consultative, legislative and administrative functions. The internal politics of Mexico throughout this period were, in an increasing measure, disturbed by the rivalry between the European-born and American-born Spaniards, between the Gachupines and the Creoles. The former tried to monopolize all power and advantages to themselves and estranged beyond redemption the feelings of the colonial and half-caste Spaniards, who formed the large majority of the population. Another source of perpetual unrest was to be found among the Indians. The old system of appointing adventurous Spaniards as trustees over extensive parts of the Indian territories had been utilized by these grantees for reducing large populations to virtual slavery. This led to a deep-rooted social and economic problem which presented itself in many and sometimes violent forms. The clergy who claimed to be champions of the Indian cause helped a good deal in raising antipathies against the government. When in 1807, Napoleon turned out the legitimate Spanish king and put his own brother Joseph on the throne of Madrid, a strong movement for Mexican independence was started by the Creoles and half-caste Indians. The ruling Gachupines, however,

forestalled their rivals, declared for separation from Spain, and sternly put down both the Creole and Indian oppositions. When in 1820, a revolutionary movement was brewing in Spain, the Gachupines and the Creoles patched up a truce and on the basis of equal rights for both sections of the Spanish Mexicans declared an independent monarchy. In 1823 the form of government was changed to a republican one. The century of free political life of Mexico has been one of the most turbulent and unsettled periods in its own or any other nation's history. The number of revolutions has been about the same as the number of years, so that it can be said of Mexico without much exaggeration that its chronic state is that of a revolution. Most of these revolutions have been political and had little far-reaching effect on the foundations of social life in the country. There have been, however, three great upheavals, in this period, of a social and economic nature. The last one, which is socialistic in its objective and patriotic in its drive, has not finally worked itself out as yet. The constitution of 1824 had set up a federal and republican form of government, which was scrapped in 1835 in favour of a centralized administration. The fortunes of the internal struggle again put the federalists in power in 1846, when they changed the basis of government from unitary to federal. This caused a defection in one of the provinces, namely Texas, which after a good deal of serious internal and international trouble, got itself admitted into the United States of America. The main part of the present constitution of Mexico was framed in 1857, though important amendments bearing on rights of labour and the national government's policy to terminate foreign concessions, were introduced in 1917.

The Mexican republic consists of twenty-eight states, each one of which enjoys a considerable amount of home rule, each having its own governor, legislature and judiciary, organized on the same principle of separation of powers which has secured, in theory at least, such wide support in the non-British part of the American continent. The state legislatures are uni-cameral. The states are divided into districts, one state being<sup>o</sup> divided into municipalities only. Besides the twenty-eight states there are one federal district and two 'territories'.

*Executive.*—The president of the republic is elected for a period of four years by direct popular vote. Both the president and his father must be born subjects of Mexico, and they must have taken no part in any of the *coups d'état*. The president cannot offer himself for immediate election after the expiry of his period. It is, however, a common practice in South- and Mid-America for the retiring president to put up a nominee for the next consecutive election, and thus to try to perpetuate a dictatorial power. If during the currency of a presidential term the president is rendered incapable, the Congress proceeds to elect his successor.

*Legislature.*—The Senate and the Chamber of Deputies comprise the Congress. The Senate contains fifty-eight members, two each from the twenty-eight states and one federal district. Senators must be thirty years of age. The term of the Senate is only two years, one half of the members being renewed every year. The Chamber of Deputies is also chosen for two years. Deputies must be at least twenty-five years of age. The number of members of the lower house varies in proportion to the population, one member being allowed for every 60,000 of the population. Members of the Congress are paid an yearly salary of 6,000 dollars.

The Congress meets every year on the first day of September and sits up to the end of December unless sooner prorogued. As a help to and check upon the executive during the parliamentary recess, a permanent standing committee of both houses is set up, consisting of fourteen senators and fifteen deputies.

*Judiciary.*—The federal judiciary consists of a Supreme Court, the district courts and the circuit courts, the judges of all of which are elected for life.

Many interesting points are to be noted in the constitution of Mexico. That a presidential candidate must have taken no part in a *coup*, is a condition which it would be very difficult to satisfy for any active public man in a country where the average of revolutions is nearly one per year. It is not known how far in practice this condition is insisted upon, but it clearly indicates the frequency of such things as *coups* and the attempts made to check them. Mexico is also unique in not having a vice-president ready to succeed the president in case of need and wisely leaves the matter in the hands of the Congress. The shortness of the term of the Senate and its coincidence with that of the Chamber of Deputies reduces the special significance of the upper house, especially as, excepting the yearly renewal of half of the senators and the requirement that they should be thirty years of age instead of twenty-five which is the minimum age for a deputy, there is no appreciable variation in the electoral basis of the two houses. The salary of the members of Congress is also extraordinarily high, as indeed is common in all these federations, and this must have very far-reaching effects on the tone of public life. Most remarkable of all is the institution of the permanent standing committee of the legislature. In a constitution, however, which professes



strictly to follow the principle of separation of powers, the utility of such an authority can at best be very limited. The absence of a parliamentary session for over eight months at a stretch may be offered as a reason for the existence of this body, but unless its functions are narrowly limited it may well usurp the powers of the Congress. That, in a country so unsettled as Mexico, judges have to be elected, is not the best of arrangements, though the life-tenure introduces a strong measure of security into the judicial service.

### VENEZUELA

From 1500 to 1810 Venezuela was a Spanish dependency governed in the main by the same system that prevailed in the other colonies of **Venezuela** Spain. The feelings of independent nationality that were moving the populations of all these colonies in the closing years of the 18th century found vent, in the case of Venezuela, in a revolt against Spanish domination in 1810. The declaration of independence in July 1811 was followed by a period of ten years, during which the newly liberated state had to fight for its existence against its erstwhile master, Spain. This movement for independence had really caught all the American colonies of Spain in its grip and at the outset of its free career Venezuela had become a member of the Republic of Columbia. A secession from this body was, however, secured in 1830. Spain formally recognized the independence of Venezuela in 1845. Till the year 1864 Venezuela was under the regime of successive dictators whose only title to office was the support of the militarist section of the population. General Falcon who was in charge of the government in that year divided the Venezuelan territory into twenty states and formed

them into a federal republic. This step was preceded by a bitter and violent controversy between the supporters of a centralized form of administration and the federalists. In spite of the nominal change in the constitution, dictatorships, in the guise of presidentships followed by dummy successors, continue to rule the land. In 1894 an attempt was made to introduce, in practice as in theory, the principle of constitutional succession rather than of dictatorial nomination. But owing to financial difficulties and complications arising out of foreign loans, it has been found impossible to implement these resolves and the dictatorships continue to be the only barrier between the country and anarchy. In April 1914, a fresh Constituent Assembly was convened, which drafted a new pact of union to be ratified by the component states. The basis of the present constitution is mainly supplied by the constitution of 1914, though some important amendments have been introduced in 1925 and 1929.

Venezuela consists of twenty states which are nominally independent and have their own legislative assemblies elected for three years. The presidents of the constituent states and two vice-presidents each are also elected by the legislative assemblies and hold office for three years. The arrangement is a replica of the federal structure and is calculated to secure greater harmony between the executive and the legislature than the strict adherence to the theory of separation of powers would allow. The centre of authority, in such an arrangement normally worked out, would be the legislature, though during his term of office the president would be immune from any interference from the legislature.

*Executive.*—The president of the federation and two vice-presidents are elected by the National Congress for

a period of seven years. The president and the vice-presidents must be Venezuelans by birth and of at least thirty years of age. The same candidate cannot be chosen for presidentship for two consecutive periods. The president appoints seven ministers for the carrying on of the day-to-day administration under his control. There is a separate commander-in-chief, appointed presumably by the Congress, in co-operation with whom the president works. The president is empowered to refuse permission to a foreigner to land in the country, to grant rights of citizenship and to expel a foreigner for breaches of laws regulating the conduct of foreigners.

*Legislature.*—The Congress consists of the Senate and the Chamber of Deputies, and meets at Caracas, the federal city. The Senate consists of forty members, elected, two each by the state legislatures for a period of seven years. The Chamber of Deputies is elected by direct manhood suffrage for a period of three years. The number of deputies is in the proportion of one member to 35,000 of the population, each state to have at least one member. The federal district and the territories are, in the matter of election to the Chamber, treated in the same way as the component states.

*Judiciary.*—The Supreme Federal Court consists of seven members chosen by the Congress for seven years as representatives of the seven judicial districts into which the federation is divided. The same persons may be reelected any number of times. Subordinate courts are created by law from time to time. The component states have their own system of courts, with supreme and superior courts.

It may be said that the Venezuelan constitution diverges most from the U.S.A. model among the Spanish American federations. The federal district has no

representation in the Senate, which perhaps is the most logical course to follow, wherever the federal capital is situated in an independent district. The election of president and vice-presidents, both in the federal and the state constitutions, is left to the Congress, which also is a very interesting effort to secure a compromise between separation and union of authority, between the presidential and the parliamentary forms. The period of office both of the president and the Senate is remarkably long, seven years; particularly the lack of periodical partial reelection of the senators makes the length of the period all the more noticeable. The term of office of the Chamber being only three years this arrangement is calculated to secure more correspondence between the Senate and the executive, rather than between the latter and the popular house. This may indeed be the designed end, but is likely, we are afraid, to introduce disagreement between the dominant view in the nation at large, reflected in the popular house, and the executive government. The provision of a separate commander-in-chief of federal forces is perhaps a more logical position, than that of many other federations in America, where most of the civilian presidents are only euphemistically the generals-in-chief. But the dissociation of the two roles may conceivably lead to a division of authority which may prove to be inconvenient in an emergency. In making state legislatures the constituencies for the senate, the Venezuelan constitution emphasizes the federal character of the upper house and introduces an appreciable difference between the electoral principles underlying the composition of the two houses of the federal legislature. The election of the judges is also left in the hands of the legislature. Thus in the

Venezuelan constitution, unlike the others considered in this chapter, the balance of political authority is appreciably turned in favour of the legislature in comparison with the executive. Federations are admittedly composite states, and it may be necessary to secure a compromise between the extreme claims of a presidential and a parliamentary form of government. This is secured by the Venezuelan constitution and hence its importance to students of comparative politics is indeed very great.

### RUSSIA

In view of the huge social reconstruction going on in Russia, a special significance attaches to the history and the form of the so-called federal constitution now provided by the fundamental law of that country. In point of extent and variety of all sorts of physical and social conditions no other country can approach Russia. For over six centuries, from the fourteenth to the beginning of the twentieth, this vast territory was under the absolute rule of the Romanovs. It was only in the reign of Alexander II, during the closing years of the nineteenth century, that the beginnings of popular institutions appear. By this time the various parts had lost even the memory of any life except the one of uniform subservience to the autocratic and centralized power of the Czars. Alexander II created district and provincial councils, the former elected by the landholders and the latter by the district councils. Substantial legislative and financial powers were conferred upon the provincial councils. A retrograde step was taken by Alexander III who put the independent *Mirs*, the ancient and autonomous village communities of Russia, under the authority

of the big landholders. The development of modern industry and a rise in the urban population were in the meanwhile going on apace, with the special support of the Russian government. With the advent of modern industrial conditions came also the socialist movement whose entry into the public sphere was heralded by the formation of the Social Democratic Party of Russia in 1898. From the very start the Russian socialists were under the influence of the most advanced Marxist school. The liberal movement, confined mostly to the middle classes and the intellectuals, was also inaugurated by the establishment of a League of Liberators in 1904. The hardened government of the Czar was not expected to lend any sympathetic ear either to the social revolutionaries or to the political reformers. But the strain put on the moral and material strength of the Russian government by the war with Japan created a favourable opportunity for the furthering of the cause of constitutional reform. An imperial decree was issued during that year, which created an Imperial Duma, based on universal suffrage and empowered to be the ultimate legislative authority. With the close of the war, however, a defiant and reactionary change came over the policy of the Czar's government. In 1906 an upper chamber composed equally of the nominees of the government and the representatives of the privileged classes was instituted and such important subjects as constitutional law, defence and foreign relations were put outside the purview of the Duma's authority. By arbitrarily tampering with electoral rules and voters' lists a packed house was secured, which was in session when the World War commenced.

As the strain of the war began to be felt, and as Russian reverses began to multiply the agitation for

political reform became more and more insistent. The extreme wing of the Social Democratic party was averse to any half measures, and they stood for nothing short of the establishment of the Marxist regime by means of a bloody revolution. This wing was in a minority and hence was called the Bolsheviki. But they were a very active set of agitators with a philosophy and programme calculated to appeal to the war-weary nation. The Czar on the other hand seemed to be overcome with a predestined fit of reactionarism, and would not listen even to the most moderate demand for reform. This obstinacy exasperated even the packed Duma then sitting. In reply to the recalcitrant attitude of that body the Czar prorogued it in February 1917. The members, however, refused to disperse and formed themselves into a constituent assembly. A mutiny in the troops and a revolt by the workers' party led to the abdication of Nicholas, the ruling Czar, on March 15. Michael, who was indicated as the successor, refused to move without the consent of the provisional government. This middle party government had no support outside the capital. The workers', peasants' and soldiers' soviets which were already formed refused to acquiesce in what they termed a bourgeois rebellion. In its eagerness to secure the support of the socialist element, the provisional government, then led by Kerensky, admitted a few of their leaders into the executive. This only led to a further weakening of authority, and anarchy followed as a matter of course. On the 7th November 1917, a huge Congress of Soviets met in Petrograd, and at this meeting Lenin and Trotsky, the leaders of the Bolsheviki, secured a majority for their programme. With the help of the military soviet the R.S.F.S.R. (Russian Socialist Federal Soviet Republic) was

proclaimed that day. The Bolsheviks, though dominant in the Congress of Soviets, then were and are today but a minority of the nation. But the lack of any coordination among the other forces and the unscrupulous and terrorist methods followed by the Bolsheviks have secured for them a success which is undoubted. It must be said, however, that they alone gave a lead to the nation which they had the strength to follow up, whereas the other factions, content with the excellence of their own programmes, were unwilling or unable to organize the necessary public opinion in support of the line of action that they proposed. By their own zeal and by the inaction of their opponents the Bolsheviks triumphed. The original Constitution framed by the Fifth All Russian Congress of Soviets, was radically revised in 1923. This amended constitution continues to be the fundamental law of the U.S.S.R. (Union of Socialist Soviet Republics) to the present day.

The R.S.F.S.R., which includes almost the whole of the former possessions of the Czar, is the main body of the union, though it is technically united on terms of equality with six other states, equally free. These six states are, Ukraine, White Russia, the Trans-Caucasian Federation, Uzbek, Turkoman and Tajikistan. The principle of self-determination was proclaimed at an early date in the revolutionary career of the soviets and these states are supposed to have been voluntarily associated in the Union. The constitution lays down that a union of states is essential for three reasons, military, economic, and propagandist. The Russian Government proper and the Trans-Caucasian Federation are federations within a federation. All constituent units are technically free to leave the federation whenever they like. In this sense the Russian constitution



is not even a federation, but merely a confederation, the sovereignty technically residing in the component states. But the whole spirit of the organization is to vest supreme authority in the organs of the central government, and the constitution does not provide for anything like a definite division of functions, which is the essence of federalism. It is a general principle of soviet administration that orders emanating from the higher soviets are to be obeyed by the lower. In fact the U.S.S.R. is a unitary state, if there is one. The constitution says as much, though the words 'federation', 'free nations', 'self-determination', and 'equality' are occasionally used. The need for internal reconstruction, external defence, and foreign propaganda is so pressing and there are so many internal and external obstacles to be overcome that any but the most centralized administration has no chance of a moment's survival. As there is no division of functions between a central and other local authorities, so also there is no separation of powers between the various organs of the state in any stage of government, central, provincial or local. The roles of the executive and legislative authorities are inextricably merged together; and even the judiciary is expected to cooperate actively with the executive in support of the aims of the Revolution. Such a state of things cannot claim to be called by the name of a constitutional government, let alone by that of a federal constitution. The usual 'Fundamental Rights' are granted by the constitution to persons, and to states; but not one of them is secure against the political police of the soviets. Whatever future may be in store for the whole Russian structure of today, there is no doubt that many of their experiments will serve a very important educational purpose for a long time to come. Among

these experiments, their political constitution is not the least interesting.

*Executive.*—The Union Congress of Soviets composed of representatives from the component states of the Union is the chief custodian of all power, legislative and otherwise. The Congress ordinarily meets only once in a year. When it is not in session all its powers are exercised by the Central Executive Committee. This Executive Committee is itself composed of two houses: the Council of the Union and the Council of Nationalities. The Council of the Union is composed of 450 members, elected by the Union Congress from among the representatives of the various states of the union, in proportion to their population, by the method of proportional representation. The Council of Nationalities consists of 135 members, five representatives each being chosen from every allied and autonomous republic and one each from autonomous regions. For every bill the assent of both the houses is necessary. In case of disagreement between the two houses, first a meeting of the delegations from the two chambers, failing that a joint session, and last of all an appeal to the Union Congress are provided for. The Central Executive Committee is convened three times in a year, and is the supreme legislative, executive, and judicial authority during that period. A presidium of the Union, i.e., a Standing Committee, is composed of nine members chosen by the Council of the Union, nine by the Council of Nationalities, and nine at a joint session, that is, twenty-seven in all. The chairmanship of the Central Executive Committee vests in a committee of one president each chosen by the committee from every constituent state.

In addition to the Central Executive Committee and the Standing Committee which are organs of supreme

executive control, subordinate executive and legislative authority is vested in the Union Council of People's Commissaries. These at present number thirteen with the exclusion of the procurer general and the chief of the political police. Each commissary is at the head of a collegium, or a bureau of the Central Executive Committee attached to his department. The standing committee may revise the decisions of the Council of Commissaries. The Council of Commissaries reports on its working severally and jointly to the Union Congress.

*Legislature.*—There is no such thing as a separate legislature in Soviet Russia, separation of powers having been deliberately rejected. But the All Russian Congress of the U.S.S.R. may be described as the supreme deliberative and sovereign body. This body is composed of the representatives of the Soviet Congresses of the various republican unions which are members of the All Russian Federation. The Soviet Congresses of the states are themselves based on the division of their total population into the soviets of workers, peasants and soldiers. There is no universal franchise, Russia not being a democracy, but a dictatorship of the proletariat. Members thus elected from occupational constituencies are chosen for an indefinite period, but may be recalled by their constituents at any time. The Union Congress has a very extensive authority over the finances and administration of the whole union. One unified budget in which the budgets of the united republics are consolidated, is presented to the Congress. Residuary powers nominally vest in the component states, but these must obey all orders emanating from the Central Executive Committee, and the Union Congress is empowered to repeal all decrees of the local governments. The

supremacy of the central government is further emphasized by the fact that finance, education, justice and the right to grant amnesty are almost entirely centralized subjects.

*Judiciary.*—There is a common code of laws for the whole union. The states are free to make supplementary rules regarding procedure, provided they do not contravene the main laws. The Supreme Court of the Union is the highest judicial tribunal and has supervisory authority over judicial bodies in the constituent republics. The fundamental objects of the judicial system are declared to be to safeguard the conquest of the proletarian revolution, and to protect the workers' and peasants' government and to support its laws. Independence cannot be predicated of any organ of government in Russia, but least of all can it be said to exist in the judiciary, where by the tenets of all constitutional government it is the most needed.

The present Russian constitution is a unitary and unified dictatorship of those who call themselves the industrial proletariat. The governments of states are based on the same system as the central government and render due homage to orders emanating from on high. Excepting the practice of replacing geographical by occupational constituencies in the formation of public bodies, there appears to be hardly anything of permanent value in the present Soviet constitution.

It may not be out of place to wind up this description of other than major federations of today, by reference to the attempts that are now being made in China, Spain and India to establish a federal form of government. The national government has already declared its resolve to introduce that form of government. This, however, entails

the fresh creation of separate provincial and district units in a scheme that for centuries has been based on absolute centralized rule. The Chinese national government place great store by independent district administrations, and they have resolved to wait for the time when these and provincial governments are developed, before introducing the full-fledged federal system. It is too early to say anything about a programme so distant and doubtful as this. It only comes as a reminder of the future prospects of federation in different parts of the world. The whole constitution of Spain is at the present moment in a melting pot, and a federation among the provinces is being considered as a probable feature of the future Spanish government. The Indian Round Table Conference has also adopted a federal form of government as the goal of Indian constitutional progress.

Before concluding this chapter it may also be of interest to refer to two existing examples of incomplete federalism. The Republic of Austria which came into being after the Great War is in form and title a federal state. Eight provinces and the city of Vienna constitute the federating states and enjoy some powers of regional self-government. The subjects set apart for provincial control are mostly cultivation, education, ecclesiastical and charitable institutions, and public works. The more important subjects of administration are all reserved for the federal government. The traditions of government in Austria continue to be those of a highly centralized administration; and thus both on account of the relative insignificance of provincial functions and the practical dependence of the provincial governments on central authorities, the Austrian constitution tends to work as

**Austria and  
South Africa**

a unitary one. As all the non-German nationalities of the old Austro-Hungarian states are now distributed among small national governments, the people of Austria are reduced to a small German minority of about seven millions. Had the Treaty of Versailles not put a ban on their joining in a federal union with the new German Republic, Austria in all probability would by now have assumed the position of a constituent state in an all-German Federation. The present Austrian constitution, though federal in form, exhibits many traces of its former imperial origin and of its present transitional character. It remains to be seen whether the course of world events facilitates the union of all German people into one federal union or the present 'provisional' constitution itself becomes permanent, much in the same way as the present French constitution. The organs of federal administration in Austria are a president directly elected by universal suffrage for a period of six years, a national assembly similarly elected, and an advisory federal chamber of forty-six members representing the nine provincial assemblies on a population basis. The case of South Africa is similar in respect of the relative insignificance of the provincial administrations, though it has the merit of being in form also a 'union' and not a 'federation'. The Union government is the supreme legislative authority in the Dominion, and functions set apart for the Provincial governments include such matters only as provincial finance, elementary education, charity, municipal institutions, local public works, markets and fisheries. Neither in form nor in substance can the Union of South Africa be entitled to be treated as a federal state. In fact the history of the South African Constitution bears out clearly that its framers desired and deliberately aimed at the formation

of a closer bond between the different colonies than the one that obtains in a federation, such as Canada and Australia. The issues of race, tariffs, railway rates and defence all indicated the superiority of the union over a federation in the then existing conditions of South Africa.

# CHAPTER IV

## FEDERAL EVOLUTION

The political institutions of all countries are substantially the outcome of the peculiarities of their history.

**Historical evolution** The truth of this remark is particularly noticeable in the development of federal constitutions. The relative position of the various component parts and the common government, and the organization of the different branches of the federal government are mostly matters of compromise between conflicting opinions and tendencies. The ultimate emergence of federalism in any given country in a particular shape is thus to be explained mainly by reference to the course of historical evolution of which it is an outcome. With this end in view it is proposed in the present chapter to pass in review the historical evolution of the constitutions of the principal federations of today, namely Switzerland, the United States of America, Germany, Canada and Australia.

### SWITZERLAND

The Swiss federation is the oldest, the most continuous and one of the most developed of the existent federal states. In fact for a student of federalism Swiss constitutional history serves as well as a laboratory, in which, from the earliest to the present times, federal life is to be seen gradually unfolding itself before the very eyes of the observer. The physical formation of the Swiss country, its hills and mountainous forests, its valleys



intersected by streams : all make ideal conditions for an isolated and small-scale political existence. Though mainly agricultural and dairy-farming, Switzerland is developing fast on the road to industrialization, and her industries today are at least of equal importance with her agriculture. A peculiarity about Swiss habitation is the existence of small towns and the virtual absence of large-sized cities. An intense attachment to local rural life and the physical features above noted are no doubt responsible for this fact. As between the various cantons there is a good deal of variation in respect of race, language and religion. Two-thirds of the population speaks German and the remaining one-third speaks French, though a small part also speaks an Italian dialect. Three-fifths of the population is Protestant and the remaining two-fifths Catholic. Out of this diversity of social and physical conditions, common state-life could be built up only by means of federation. In other than political fields, e.g., economic and educational, the same tendency at securing unity in diversity prevails in this country. Though the feelings of patriotism entertained by the Swiss are only too obvious, and though further a new cultural and economic unity is being steadily developed among them, yet Switzerland even to the present day remains the most perfect instance of independent, almost isolated, state-life in a federation. The claims of national unity are reconciled effectively with those of local liberty. That this end has been achieved without passing through the intermediate stage of any elaborate state-life of a unitary type in the cantons, makes the course of Swiss federal evolution almost unique.

Switzerland is a country of small village communities. Among these, from the earliest times, some sort of an undeveloped federal tie, as that among the backward

Greek states, was existent. But the beginnings of a genuine federation can be traced to the formal re-establishment of a defensive alliance between three forest cantons in the watersheds of the Alps, in 1291 A.D. These cantons were Uri, Schwyz—after which the land came to be called Switzerland—and Nidwalden, and the common foe, against whom united opposition was to be offered, were the Habsburg counts who under the Roman Emperors held feudal authority in those parts. The three cantons by their united effort succeeded in securing from the Emperor his direct protection; and later on when one of the Habsburg counts offered himself as a candidate for the Emperorship, the Swiss cantons actively espoused the anti-Habsburg cause. This led to an armed conflict, but the confederates had, by then, mustered sufficient strength to inflict a signal defeat on the Habsburgs at Morgarten in 1315. This success enhanced the power and prestige of the Swiss league, which was then reorganized on a closer basis. It was provided that the members should collectively recognize the feudal lords and no one should change his feudal allegiance without the league's sanction. The Emperor and the count recognized this privileged position. Other states were soon attracted by the league. Lucerne joined in 1332, and Zurich, an important Imperial city, was affiliated by its dominant democratic party in 1351. The tie that bound this powerful city with the rural league was, however, loose, and this fact was later evidenced on many an occasion, when Zurich attempted by violent methods to break away from the common confederate policy. Glarus and Zug came in one year later only to be followed the next year by Berne. It is a very noteworthy fact that all these five members were

severally leagued with the three original cantons, and among themselves the five new-comers had no direct relations. The proud and ambitious Habsburgs tried hard to regain their control over the confederates, often by a recourse to arms. These attempts proved futile and in 1474 the Habsburgs had to renounce their rights of overlordship. At this time a new development took place in the organization of the Swiss Confederation. Those parts which were conquered by the league from the Habsburgs were either held as the common territory of the league, or were associated with the league or its several members in a subject capacity. Appenzell, St. Gall and Valais were in this position. It was only under the pressure first of France, and then of the allies armed against Napoleon that these subject states were raised to the position of equality with other members. It was also during the period of the league's struggle with the Habsburgs that the first civil war resulted from the defection of Zurich. The rebel state was, however, overpowered and had to renounce formally all connexion with Austria. In its opposition to the Habsburgs, the Confederation secured at different times alliances with France, Burgundy, Milan and even Austria. Thus the independence and integrity of the league came to be widely recognized.

At this stage of its development the constitution of the Confederation was not very elaborate. There was a diet consisting of two envoys from every member state and one each from every associate state. This body met only on occasions and helped to formulate a common policy in such matters as foreign relations, war and peace, customs and coinage.

**Virtual  
recognition  
of Swiss  
independence**

The decisions of the Diet were not binding on the members, and excepting the administration of the common territories, the voluntary assent of cantonal governments was the only sanction behind the action of the league. The looseness of the confederation was further accentuated by the rivalries between the rural and the urban states. When at the end of the war with Burgundy (1470) the question of admitting two new states, Fribourg and Soleure, both urban in constitution, came up before the league the rural cantons who were then in a majority of two, strenuously opposed the new admissions. For a time a disruption of the league or a civil war appeared to be imminent, but in the last resort a compromise was reached and the two states were admitted. In those days in various parts of the 'Holy Roman Empire' local leagues and confederations, partly voluntary and partly promoted by the Emperor himself, were formed among local authorities such as free cities, feudal princes and monastic landlords. The purpose of these organizations was a general attempt at defence and internal order. As Switzerland was technically a part of the Roman Empire, it was invited by leagues like the Swabian League of South Germany to join them (1488). The confederated Swiss states, however, always maintained their separate identity and refused to become members of these organizations. When later on in 1495 the Emperor himself established the Diet of Worms with a similar purpose and called upon the Swiss states to attend the same, the Confederation refused to accede. This led to a war with the Empire in which the Confederation could so far assert its position as to secure by the treaty of Basle (1499) a practical recognition of Swiss independence. This event added a good deal to the political

importance of the league, which was further increased by the addition to its membership of Basle and Schaffhausen in 1501. When in 1513 Appenzell, till then an associate state, was raised to the position of equality, there were thirteen confederate states in all. It might be mentioned at this stage, that the system of Swiss soldiers being recruited for their mercenary armies by continental governments had already started, and the French government, for instance, in maintaining good relations with the Confederation, was actuated by a desire to secure a steady, and if possible an exclusive, supply of Swiss fighters.

A new element of discord was introduced in Swiss public life in 1519, in which year Zwingli, the noted Protestant preacher, took up his residence in Switzerland and commenced a very vigorous campaign of Reformation. This deepened the already existing division between the rural and the urban cantons, because the former as a class were the supporters of the old Church, as the latter were of the new. A civil war again followed in which Zurich, the supporter of reform, was worsted. The death of Zwingli, in 1531, alone prevented the protraction of this internecine struggle. But now it was the turn of the Catholics to take up an aggressive attitude in regard to religious propaganda. This not only emphasized the divisions as between cantons, but even led to the splitting up of one canton, Appenzell, into two parts, each owing allegiance to a separate church. The Catholic cantons formed a league of their own and went so far as to seek the help of the traditional enemies of Swiss independence, the Habsburgs. This conflict dragged on for decades, and continued to weaken the federal tie. During the course of the Thirty Years' War,

**Religious  
discord**

Switzerland was comparatively free from actual fighting. On the contrary, the war helped forward the material progress of the country a good deal. The treaty of Westphalia which terminated that war specifically recognized the independence of Switzerland, which had already been acknowledged in fact. As a result of this war, however, Swiss borders came perilously near French, and a national organization of militia for defence purposes became imperative. The cessation of warlike activities brought about a crisis in the fortunes of the agricultural population, and the discontent that was so bred, was fanned by the inimical feelings entertained in many cantons by the rural dependents against their political masters, the burghers. This 'peasants' revolt' was, however, suppressed with ease.

A movement for greater centralization was now started by the bigger states led by Zurich, but the smaller cantons, mostly rural and Roman Catholic, offered a determined opposition to this new move. The revocation of the Edict of Nantes by the French Government led to an estrangement between Protestant cantons, headed by Zurich, and the French king. As a balance against the French support to the Catholic cantons, Zurich sought an alliance with Holland. This very nearly broke the bond of union between the Swiss people. At the battle of Malplaquet, the Swiss troops employed in the rival armies engaged one another in armed combat. This was an unheard-of thing for the Swiss to do. Later on this struggle was witnessed on the Swiss soil itself, and in the civil war that followed success lay with the Protestant cantons. It may be said, however, that from this date the religious atmosphere of the country attained comparative steadiness.

During the eighteenth century Switzerland progressed a good deal in education and in material wealth. Agriculture, dairying and cattle breeding continued to progress. The foreign earnings and pensions of Swiss soldiers brought into the country a steady and considerable flow of wealth. The manufacturing industries of Switzerland such as textiles, lace and embroidery, attracted wider and wider markets. As regards its constitution the Confederation then consisted of thirteen member-states and almost an equal number of associates and dependents. The forest cantons were democratic in form, but in many of them a few families, enjoying the benefit of recruitment for foreign military service, dominated the administration. Some cantons like Berne were ruled on an aristocratic system, while certain others had the borough or guild type of government. Some of the dependent states were monarchical and others cantonal in form. The educated classes of almost all the countries in western Europe and America were then under the influence of the teachings of the French philosophers. Enthused with the idea of nationality and self-rule the Swiss intelligentsia started a liberal movement in 1760. When the revolutionaries attained political power in France, their intervention was deliberately sought by these Swiss reformers. As the invitation came at a time when the triumphant revolutionaries had launched upon their self-appointed mission of liberation, the French armies soon overran and occupied Switzerland. The French occupation was a heavy economic burden on the small nation and a number of clashes between the forest cantons and the French troops were inevitable. But the influence of the French contact on constitutional development was remarkable. Under guidance from Paris the Helvetic Republic was

**French  
influence**

established in 1798. The sovereignty of the people, not of cantons, and religious and civic equality were proclaimed. A directory of five, helped by a federal bicameral legislature and a judiciary were set up. The seat of federal administration was to be Lucerne. At the head of every canton there was to be a prefect appointed by the central government. A common criminal law and a common Swiss citizenship were introduced. These changes were welcomed by the subordinate states because they had benefited by their being raised to the status of equality with other members. Switzerland, as a whole, however, became a mere appendage to France, which even deprived the Swiss government of part of its territory to secure a direct passage to Italy and Germany.

The Swiss cantons strenuously opposed this forcible administration of the French recipe of popular government. In the new constitution they missed the reality of self-rule and the passionate attachment to their cantons. Napoleon recognized the strength of this resistance and by the Act of Mediation of 1802 attempted to restore to the cantons part of their freedom. The federal executive was practically abolished, and a Diet, consisting of two members each from the six bigger states and one each from the smaller, was set up for deliberative purposes. The six bigger states were to enjoy by turns the possession of such executive power as was allowed to the common government. This constitution was in its form acceptable to the Swiss, a conclusion that was evidenced by the fact that those who voted against it at the plebiscite, formed a minority of the total body of voters. But the position of virtual overlordship that was occu-

**Act of  
Mediation,  
1802**



pied by Napoleon was not calculated to reconcile the Swiss to the new order. In particular, as the connexion with France, turned Switzerland, for the time being, into the cockpit of Europe, there was all the more reason for Swiss sullenness. After his successes over Austria and Prussia, Napoleon carefully organized Switzerland into a friendly buffer-state and secured for France the monopoly of recruiting soldiers in Switzerland. When after the defeat of Napoleon at Leipzig in 1812, the allied armies marched through Switzerland on their way to France, a number of states took the opportunity to bring about aristocratic revolutions. But after the settlement with France the allies compelled these revolutionaries to re-establish the democratic form of government in the cantons, as also the old confederation. The treaty of Paris finally recognized the neutrality of Switzerland, which was also restored to its former dimensions. The number of states had by then increased to twenty-two owing to the emancipation of the subject and allied states.

A federal pact was entered into by all the twenty-two states. The Diet was to be composed of one member each from the twenty-two cantons, and **Sonderbund** the presidential authority was to vest in the three forest districts. The lack of any effective central government in this arrangement was mainly due to a reaction against the excessive centralization during the period of French domination. The league thus weakened and, divided, was like wax in the hands of the Holy Alliance, which used it for the persecution of their political exiles. The economic consequences of the peace were disastrous for Switzerland. Cheap goods from England began to swamp the Swiss markets but the continental markets were closed

against Swiss produce. The absence of a strong central government to enforce a uniform customs policy began to be felt in an increasing measure. In every state there gradually arose parties of political reformers who agitated for democratic and federal reform. The intensity of this agitation was so great in Basle, that the canton was split into two. These reformers succeeded in getting the Diet to resolve in 1832 in favour of the renewal of the old pact which was to expire in 1848. International difficulties arising out of the question of Swiss reception of foreign revolutionaries for a time put off, but eventually intensified the movement for the creation of a strong common government. The more liberal of the cantons, seven in number, formed themselves into a league for the protection of their institutions in the federal pact to be newly formed. Their example was copied by the conservative cantons. Later on the liberal group included in its programme the question of religious reform. This led to an accession of Catholic cantons to the conservative league. The catholic league claimed that according to the pact of 1815 it was not open to states like Zurich to abolish monasteries, as they had latterly done. The Diet, however, refused to interfere. Thereupon seven of the Catholic states formed themselves into a separate league called the Sonderbund. The Diet declared this body to be illegal, and in an armed conflict between the two, the forces of the new league were defeated and the unity of the confederation was restored.

The need of an immediate change in the federal constitution was recognized on all hands. A new constitution was framed under which the Swiss confederation was firmly set on the road to become a full-fledged federation. While respecting the cantonal sovereignty

in all matters of internal concern, it set up a central government with wide powers of administration, particularly in the economic field. The method of constitutional amendment was rendered as flexible as possible under the circumstances, to avoid the repetition of the inconvenience that had resulted from the rigidity of the pact of 1815. The American model was utilized to some extent in framing the legislature. Berne was made the permanent capital. With a few amendments introduced later on and with an extensive revision in 1874 the present constitution of Switzerland is the one adopted in 1848. With the growing complexity of Swiss life the need for united state action is increasing, and there is a tendency towards centralization which is unmistakable. Switzerland still is the most perfect type of federalism, though formally it is still termed a 'confederation'. On account of the League of Nations and allied institutions located within its borders it bids fair to serve as a centre of a much wider federation than it is at present.

**Consti-  
tutions of  
1848 and  
1874**

#### THE UNITED STATES OF AMERICA

In point of political prestige the American federation enjoys a position of premier importance. In varying degrees it has served as a model for all the modern federations. The story of its formation is interesting inasmuch as it brings out the close correspondence between political practice and historical fact. In the fourth quarter of the sixteenth century commenced the process of colonization by European nations in North America. Gradually other nations than Great Britain dropped out of the race, and by 1760 all the

**British  
Colonies  
in  
America**

colonies were British. Both in point of stock and institutions America has utilized English origins. Settlements, in course of time, grew into townships, and townships into loose organizations, and these in their turn into colonies or states. The towns enjoyed premier importance and the constitution was throughout popular. There were three types among these colonies. Some were proprietary, that is, merely founded by some leading families with the help of their followers. Others were Royal, having been established by corporations under Royal charter. Certain others were chartered colonies established by groups of free settlers under the general protection of the home country. In all these varieties of colonies there was a substantial uniformity of administrative institutions. There was a Governor at the head with an executive council, and there was a representative Assembly for legislative purposes. Except in the case of proprietary colonies, where the Governor and the council were nominated by the proprietor, the Governors and councils were appointed by the King. The persons appointed, however, were local and by the necessities of the case a good deal of independence was enjoyed by the colonial assemblies. The spirit of local isolation was strong, and the change from a smaller to a wider unit was always reluctantly achieved. Maryland, Virginia and Massachusetts are typical examples of a proprietary, Royal and charter colony respectively. In some colonies even primary assemblies of all qualified voters existed. Not only were a number of undeveloped federations among the townships known before their merging into a colony, but from 1643 to 1683 the New England colonies had a loose confederation of their own, formed mostly for the purpose of defence against the Indians. But the pre-

ponderent position held by Massachusetts vitiated a good deal the federal character of the formation.

The first attempt at the establishment of a general federation was made in 1754, but failed to materialize.

**Declaration  
of July 4,  
1776**

The Assembly that met at New York on the eve of the revolution to protest against the imposition of a tax by the British Parliament was the first representative conference of the colonies. When once the relations between the colonies and the mother-country were broken off, a series of continental congresses had to meet to draw up plans of action. All the thirteen colonies were represented at these congresses and at the outset their tone was distinctly loyal to the mother-country. When, however, the help of France was invited, and that nation promised to give the same only on condition that the colonies declared their independence of Great Britain, the hands of the congress were in a way forced to make the momentous declaration of July 4, 1776. This declaration contains the memorable words 'These united colonies are and of a Right ought to be Free and Independent States' The sense of unity created by a common danger was immensely strengthened by the already existing common bonds of race, language, and political ideas.

As the war with Great Britain dragged on, the need and the urge for permanent union became more pronounced. The articles of confederation

**Articles of  
confederation**

adopted in 1781 laid down the foundation of the later federal development. A central organization for the purpose of legislation was to be set up consisting of from two to seven delegates from each state in proportion to its population. The members from each state were, however, to vote together and

were to count as one. Defence, foreign relations, finance, inter-state justice, and weights and measures were to be central subjects. Decisions on these matters could be taken by a majority of at least nine out of the thirteen votes. Some provision was also made for central administration of justice. The states, however, could not be compelled to follow any course arrived at by the congress, which was in fact little more than an international convention. As Alexander Hamilton remarked, the confederation was fit neither for war nor peace. So long as the stress of the war continued, it was comparatively easy to secure joint action. But with the return of peace internal weaknesses and jealousies began to develop. Tariff rivalries were freely indulged in. There was a very serious internal rebellion in Massachusetts. Foreign countries treated the colonies with scant courtesy. It was soon clear that for internal peace, external strength and common economic progress a stronger and more dependable central organization was essential.

When the Congress of Philadelphia met in 1787 to consider the constitutional position, the current of public opinion was definitely in favour of a closer union and a stronger central government. But the spirit of localism had not yet vanished and, though assured of a sympathetic consideration, the cause of the federal government was always on the defensive. Many of the features of the constitution framed at that congress, were already familiar experiences in the colonies. All the states had their constitution set out in their charters, and hence a written constitution was not a strange experience. In the matter of the formation of the federal legislature there was a sharp contest between two sets of proposals. The scheme favoured by Virginia

provided for a bicameral legislature with a proportionate representation for the states in both. On the other hand the plan chalked out by New Jersey suggested a unicameral body with equal representation to all constituent states. Ultimately a compromise was effected between the two schemes whereby the upper house was to embody the principle of equality of states and the lower house was to be elected on the basis of population. Thus compromise, adjustment and expediency were the watchwords of the framers of the American federation, as they had been of the builders of the English constitution. The insistence on a thoroughgoing adoption of the principle of separation of powers must, however, be set down as a tribute to the relevant theory of Montesquieu which then had attracted much unmerited support. America has, in this respect, served as a misleading guide to many smaller federations in South and Mid-America.

The confederation as set up in 1789 was looked upon by many contemporary observers as being only temporary, and in the earlier period of its existence threats of withdrawal (as those from Pennsylvania, Massachusetts and Virginia), were received with a tolerance unsuited to members of a federation as now understood. It was in these initial stages before the confirmation of the draft constitution by state legislatures, and before the new constitution had taken firm root in the thoughts of the American people, that the propagandist work of the Federalist party led by Hamilton was achieved. In their zeal to champion the cause of federalism, the advocates of this party brought upon themselves the just charge of favouring greater centralization than the people were then prepared to accept. This brought

**The Federalist party**

about a strong revulsion of feeling against the Federalists who met a sudden extinction as a party. Their place was taken by the Democratic-Republicans, who started as supporters of 'states' liberties', but influenced by the changing needs of an expanding country have in course of time themselves become supporters of a broad construction of the federal constitution.

One of the two principal features of a federation, namely the provision of a federal citizenship apart from and superior to the state citizenship, had clearly emerged in the constitution of 1789. As state patriotism gave place to national sentiment, and as the economic and military needs of the country demanded unified efforts, the feeling of jealousy entertained for the central authority vanished. The one obstacle for the creation of a common feeling of federal citizenship was the existence in the southern states of conditions of slavery. The economic and social organization in these states was so different from what prevailed in the north that it was not to be expected that the inhabitants of the two types of colonies would develop a uniform feeling of loyalty to the federal state. With the successful issue of the Civil War and the consequent abolition of slavery this last obstacle to the growth of federalism in America was removed. A united nation and a uniform citizenship became then a feasible proposition. The importance of the state governments, contrary to expectations, has not appreciably abated. With the growing complexity of American life these are performing many vital services for their citizens. But the state and federal governments now work as supplements to one another and not as rivals, as two channels through which the current of a common political life runs. In the minds of

**The Civil  
War and  
after**



American politicians the important divisions of the federation are no longer the 'states', which are administrative units, but the 'sections', 'regions' and 'belts' into which America is economically and socially divided. The present constitution of the American federation is in its letter substantially the same as formed in 1789 and extensively amended in 1791. By constant interpretation at the hands of the federal judiciary, and occasional amendments, it is made to keep pace with changes in public sentiment and national needs.

### GERMANY

Though it is agreed that the post-War and pre-War organization of Germany is in principle federal, there are many 'special' features of Germany's constitutional organization that have exercised the minds of political theorists. The real significance of all these peculiarities can be grasped only by viewing the modern German constitution in its proper historical perspective. The various German races were first brought under a common control in the reign of Charlemagne at the commencement of the ninth century. When, however, Karl himself became the Roman Emperor, the liberties of the Germans were practically annihilated. With the election of Henry, Duke of Saxony, to the Kingship of Germany the first considerable organization among the big German states, five in number, was witnessed. The position of the elected king was that of a first among equals. After Henry, his son Otto succeeded to the 'kingship' of Germany. When he was later on elected to the Roman Emperorship, he was brought into the vortex of the unending conflicts that the Roman Emperors had to wage with the non-German nations, and later still with the

**Medieval  
Germany**

Vatican, who claimed superiority over the Empire itself. This continued conflict at the centre resulted in a weakening and disruption of the German Reich to an extent never before reached. Besides the few big states, there were more than three hundred small ones, and a vast number of independent jurisdictions, all of which, moreover, had their territories dispersed in various parts of the country. There were many states which were ruled by dignitaries of the Church. The princes looked upon their principalities as their personal possessions. In most of the towns the old restrictions of guilds continued to hamper the normal economic growth of their inhabitants.

Out of this state of doubtful sovereignty, dispersed authority and disunion Germany was roused by Napoleon's campaigns in eastern and South Europe. After his victories over Austria and Prussia Napoleon compelled both the princes to allow the electors of Bavaria and Wurtemberg to assume royal title, and to recognize their sovereignty and that of Baden. A large number of the smaller German states were conquered and merged into the bigger ones. The Roman Emperor was compelled formally to renounce his suzerainty over Germany. More than all this, the ideas of freedom and national unity that spread under the French influence worked as a leaven in the Germany of those days. In July 1806 the Confederation of the Rhine, consisting of sixteen states in eastern and middle Germany, was formed under the general protective authority of Napoleon. The sovereignty of the member-states was formally enunciated, but was practically lost in a common subjection to the protector's will. Prussia took the lead in organizing the remainder of the German states in the

**Confederation of the Rhine**

north in a separate league. The introduction of municipal reform in Prussia at that time was expected to make its leadership somewhat acceptable to the political reformers in many states. On the whole, however, the states disfavoured the Prussian overtures. On the contrary the defeat of Prussia in the war with France in 1806 enhanced the prestige of the Rhinebund, whose membership increased to thirty-six by 1811. Austria, Prussia, Pomerania and Holstein were the only important German states that were out of the confederation, whose only common organ was the Diet.

The reverses that Napoleon met with in Russia proved a deathblow to the Rhinebund, as the real bond that held it together was the control of the conqueror of Europe. When Russia and Prussia took the lead in opposing the French Emperor after his retreat from Moscow, they called upon the members of the Rhine Confederation to renounce allegiance to France. They actually invaded Germany for the purpose of enforcing their demand. The bigger states of the confederation, Bavaria, Wurtemberg, Baden and Hessen, though in no special degree attached to the French connexion, were, however, in no mood to agree to this dictation of the allies, and by holding out as long as they could, they secured for themselves a favoured position in the reorganized confederation. The treaty of Paris, which summated the fall of Napoleon, contained a special provision declaring: 'The states of Germany shall be independent and shall be united by a federal tie.' Prussia, as was to be expected, took the lead in implementing this declaration, and, left to itself, would have organized a league more or less dependent on its will. Thanks, however, to the opposition offered by Bavaria and

**The German  
Confederation**

Wurtemberg, and the support rendered to their claims by Austria, the Confederation that was formed in 1815 was based on a recognition of the complete and independent sovereignty of states. In all thirty-nine states including Austria, the permanent President, and Prussia, the permanent vice-President, joined the league. There was a federal Diet, in the decisions of which the states were unequally represented, and defence and internal peace were the main functions which were discussed by it. There was no common executive authority and the Confederation was little more than a league of independent states.

The Congress of Vienna had called upon the various German princes to grant political reforms to their subjects by means of written constitutions. This recommendation was defied by many states, **The Liberal movement in Germany** Austria and Prussia giving the lead to the reactionaries. Prussia contented itself with granting local Diets to the eight provinces in which it was divided. Some other states, who granted written constitutions, utilized the occasion to revoke even such rights as were granted under the French influence. The reforming elements in all the states were thus supplied with a common objective which they felt convinced could be attained only by a common effort. Between 1815 and 1848 all shades of political opinion united in their efforts to demand a nation-wide extension of democratic institutions. The Diet of the Confederation, which was composed of the personal representatives of the princes, was opposed to this movement. As in many other European countries so in Germany as well, a rebellion broke out in 1848, and after a short and violent career was suppressed. This movement was mostly led by the middle classes

and the intelligentsia who had come under the influence of new ideas of nationalism and democracy. But among these forces of discontent there was no unity of purpose, no common plan. Not to mention the extreme socialists, who even then had a nucleus in German political life, there were divisions among the federalists and unitarians, republicans and constitutional monarchists, and they spent a long time discussing details and theories. But the significance of the wide appeal that the movement of 1848 made to the people was not lost upon the princes. They saw in the unsuccessful rebellion the writing on the wall and prepared themselves to forestall the revolutionaries. With this end in view they convened at Frankfurt a meeting of representatives chosen by special electoral bodies formed for this purpose by the states. At the same time, the independent reformers held their own convention at the same place. This was attended by over five hundred representatives chosen in all the states on the basis of universal suffrage. This popular convention could not come to any agreement, and therefore dispersed leaving behind a committee of fifty, for formulating a suitable scheme and for opening negotiations with the officially summoned conference. A joint convention was thereupon held but was swamped by the extremists. This body framed a draft constitution of which the following were the chief features. The Emperor was to be elected and he was to be inviolable. The government was to be carried on through ministers responsible to the legislature. The subjects to be centrally administered included foreign relations, war and peace, and a common tariff. Federal authority was to be dependent not on the voluntary consent of the princes but on the recognition of an independent and supreme federal sovereignty. A common federal citizenship with

a declaration of fundamental rights was provided for. It is no wonder that this scheme was opposed by the princes and by the large majority of citizens, who still held that the federal constitution should be formed by agreement between the princes rather than by a union among the people. In other words, the feeling of a common nationality had not developed to the extent necessary to secure adequate support for a full-fledged federal scheme. When the joint convention elected the King of Prussia as the Emperor of Germany, the latter haughtily refused the invitation not only because it emanated from a quarter which he was not prepared to recognize as the source of his sovereignty, but also because he wanted to avoid a premature conflict with Austria. After this futile attempt to introduce a federation, the old organization, or the lack of it, provided by the Confederation of 1815 continued to operate till it was replaced by the more elaborately organized North German Confederation in 1867.

Though the Prussian monarch had thus formally refused the Emperorship offered by the Convention, he had no intention of slackening his efforts at the formation of a customs union, that had already secured a good deal of response before the political movement at a closer union caught the eyes of the public. From 1818 onwards the Prussian tariff was steadily improved in the direction of free trade. The road policy of Prussia was progressive, and it offered to the other states a highway to the sea. The other German states realized that the interests of their subjects both as producers and consumers lay in widening the field of free economic activity, and they joined the Zollverein thus inaugurated by Prussia. By 1836 the membership of the customs union was twenty.

**Prussian  
Zollverein**

In that year Hanover and three other states organized a rival union, but the purpose of both the leagues was so obviously identical that by 1854 a combined Zollverein was established. The traditional economic policy of Austria was protectionist, and in its political and social organization Austria followed an absolutist and restrictive model. Austria was a land-locked country, and the religion that it supported was Catholicism. The endless troubles that it had with its subject races also emphasized the lines of division between the other German states and Austria. The prevailing opinion in favour of the customs union was, however, so strong that even Austria promised to join it, only deferring the actual act to 1865—by which date, however, the relations between Austria and Prussia had been strained to breaking point.

The very extensive support secured by Prussia to the expansion of the customs union was a significant sign of the times. It only revealed one aspect of the popular longing for the unity of the nation and the adoption of a policy of liberalism. The princes themselves had realized the strength of this new development in popular thought. The economic and military prospects were calculated to emphasize the need of wider union. A gifted leader was necessary to harness popular enthusiasm and princely co-operation to the cause of national consolidation and progress. This role was filled by Bismarck, who makes his appearance on the scene in 1862, as the Chancellor of Prussia, a post that he was to fill for nearly thirty years. Bismarck had realized that so long as the titular leadership of the Diet was vested in Austria there would be no scope for the effective expansion of Prussian

**Bismarck  
and the  
North  
German  
Confedera-  
tion**

influence. He was planning a *coup* whereby Austria could be ousted from the Confederation and a separate league, with Prussia as the leader, could be established. He was sounding many members as to their willingness to join such a new league if it were established. The jealousy entertained by the other states against Prussia was as yet too strong and the position held by Austria, particularly in relation to the southern states, was too dominant, to invoke much enthusiasm for the Prussian proposal. An essential preliminary to the success of the scheme was the extinction of Austria as a German state, and this Bismarck proceeded to achieve by a train of diplomatic moves which ended with the declaration of war against Austria in 1866. The two duchies of Schleswig and Holstein, which had been jointly conceded to Austria and Prussia by the King of Denmark, were for a time collectively administered. But later on a compromise was reached between the two German states whereby it was agreed that Prussia should administer Schleswig and leave Holstein in the hands of Austria. The Austrian authorities in Holstein granted some popular concessions to the subjects of the Duchy, which were 'resented' by Prussia, and as a counter move it demanded restoration of the old system whereby the two Duchies were commonly administered. Austria having refused to accede to such a demand, Prussia moved its troops into Holstein to take possession from the Austrian authorities. As co-members of the Diet of the Confederation it was legally obligatory on Prussia to refer the matter to the Diet before taking the law into its own hands. As, however, this was not done, Austria got the Diet to pass a decree calling upon its members to arm against Prussia. The envoys of Prussia, thereupon, announced the withdrawal



of their state from the Confederation, and formally promulgated the plan of a North German Confederation which had been previously discussed in an informal fashion with most of the German princes. The defeat of Austria at Sadowa set the seal on Prussian plans and the new confederation was inaugurated in 1867.

With the exception of a few southern states, who joined later in 1871, all the German states north of the river Maine became members of the confederation. Prussia was to be the president of the confederation. The national law was to be independent of and superior to state law, and a common federal citizenship was provided. In all, sixteen states joined the federation, and the constitutional changes, after having been approved of by the Princes and the Constituent Assembly, were confirmed later by the state legislatures. In these proceedings we find a much greater regard shown to popular prejudices than was vouchsafed in 1848. This was mostly due to the influence of Bismarck, who though an autocrat in administration, held that the best guarantee of securing support for a conservative policy was to make the large mass of common citizens politically powerful. The constitution as accepted by the princes' and peoples' representatives came into operation on being simultaneously promulgated by all the states. This fact is interpreted by some constitutional lawyers as proving the German constitution to be a confederation, sovereignty residing in the princes. This, however, is a misconception. The correct constitutional version of the procedure would be that in response to a new feeling of common nationality a new fact of sovereignty arose which was expressed by the existing organs like the princes and the state legislatures. But the sovereignty of the federation was

no longer dependent on the will of the individual states. Both the state governments and the federal government thenceforward figured as exponents of a common sovereignty emanating from a recognition of the people.

The North German Confederation thus formed in 1867 remained in virtual existence till 1918. In 1871 at Versailles, while the German troops were yet attacking Paris, the Confederation was declared to be an Empire, and the King of Prussia instead of being called a President began to be termed an Emperor. It was on that occasion that those of the German states in the south which had held aloof till then joined the federation. In fact the war with France was declared, among other things, to rouse the federal enthusiasm of the vacillating states. But no change was effected in the fundamental law of the constitution as laid down by agreement in 1867. According to this constitution Prussia was to be the permanent President of the Confederation, and as such was to maintain a general supervision over the armed forces of the members in peace and war. Taxation and transport were also declared federal subjects, in addition to foreign relations, customs, law, etc. The Bundesrat was the Upper or federal chamber, and consisted of representatives of state governments as fixed by the original agreement, based on the constitution of the Zollverein. Prussia had in all seventeen votes in its own right and other states had votes in proportion to their importance. Fourteen votes in the Bundesrat were enough to negative any constitutional measure, and thus Prussia possessed an effective constitutional veto. So also Bavaria, Wurtemberg and Saxony acting together, and the rest of the states by their

and  
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tion

common action, could prevent the violation of their rights. The Lower house, the Reichstag, was formed on a popular basis. Residuary powers remained with the states. In practice, however, owing to the practice of regulating by federal law a number of things that ordinarily would be administered by the state governments, a constant encroachment on the rights of the constituent states was going on. Public opinion seemed to have been so thoroughly identified with the policy of militant economic nationalism pursued by Bismarck that the constitutional issue faded into the background. As the judiciary was entirely provincial and as it was not empowered to pronounce upon the legality of federal laws, this process of centralization or, to put it more correctly, Prussianization, went on unchecked. Inequality of treatment as between state and state was freely tolerated. Saxony, Bavaria and Wurtemberg were even allowed to maintain representatives at some foreign courts. The influence both constitutional and political enjoyed by Prussia was so overwhelming, that had it not been for the development of a genuine national patriotism, the constitution could well have been described as a hegemony of Prussia.

The political reformers continued to rouse public support for two steps in particular, firstly the abolition of the three-class system,—under which the whole population of a state was divided into three classes according to the aggregate of taxes paid, and equal representation was granted to each one of these, thus reducing the system to an oligarchy; and secondly the introduction of responsible government both in the states as well as at the centre. As popular enthusiasm was concentrated on the Imperial idea till

**Political  
discontent  
and the  
World  
War**

1914, the princes and the Emperor could afford to ignore or to put off these demands. As the War dragged on and an ever-increasing demand was made on the nation's resources and sacrifices, promises of a reform in the required direction began to be made. But little was done to carry them into practice. The reformers had called in the aid of the socialist party. In the year 1917 the revolution in Russia took place. This had the effect of driving the German socialists into making demands for far-reaching changes in internal and international policy which the political reformers were not prepared to accept. In October 1918, as defeat stared the nation in the face, the Emperor promised to introduce parliamentary government into the Reich. The reformers were not prepared to take such a 'grant' at its face value. Moreover as it became known that President Wilson insisted as a condition precedent to the Armistice that the Hohenzollern monarch must abdicate, the republican idea gained an immense backing. The socialists, of course, all insisted on abdication. Early in November 1918 Germany's defeat was clear. This was so tremendous and unexpected an event, and the forces of radical and revolutionary agitation had so far spread in the country that the princes, the middle class politicians and the intelligentsia found all their moorings gone. They were, in a sense, paralysed. The communistic group in the navy began the process of revolution by acquiring forcible control of the coast towns and from there moved inwards. The princes had outlived their usefulness and abdicated or were busted.

The demand for the abdication of the Emperor, which was gathering momentum at an immense speed as defeat became assured, was long resisted by the Kaiser. It was only when the armed forces themselves took up

the revolutionary cry that he brought himself to agree to a conditional abdication. By this time, however, things had moved so fast in Berlin as to compel the ex-Emperor to flee to Holland. Already on November 9th, a mutiny in the garrison and a general strike of workers at the capital had brought the situation to a crisis. Prince Max, the Chancellor, on his own authority, despairing of getting the consent of the Kaiser, had announced the latter's abdication and the eventual convening of a popular assembly. Von Ebert, the leader of the socialists who had the support of the dominant sections of the public, demanded a transference of power to his hands. It is a very remarkable circumstance, indicative of a peculiarly German trait, that this change was brought about by the virtual appointment of Ebert as the Chancellor in place of Prince Max, the permanent staff of government continuing to serve the new regime. The appointment of Ebert was not made according to the letter of the law, as the Chancellor could be appointed only by the Emperor; but the constitutionalists led by Max, and the revolutionaries led by Ebert, both agreed that, in the interest of the peace and progress of the nation, it was necessary to regulate the course of the revolution. The local authorities also acquiesced in this act and loyally co-operated with the new administration. Thus by a sense of discipline and by firm leadership Germany was saved from an anarchy which had a year ago reduced Russia to a pitiable plight. The militarization of the German people which was going on for over half a century under the Imperial regime may be credited for having instilled these instincts of discipline and order among all classes of the

**Abdication  
of the  
Emperor  
and  
formation  
of a  
socialist  
govern-  
ment**

nation. The control of the discontented forces in Berlin soon passed out of the hands of the moderate socialists who were led by Ebert. A Central Council of workers' and soldiers' councils assumed the dominant position. Recognizing their strength, Ebert consented to form a council of six ministers consisting exclusively of socialists, and to run the administration on behalf of the Berlin Council. The permanent government staff also acquiesced in this act, and thus a second revolution was averted. In the local bodies also the transfer of control to communist hands had been effected in a more or less peaceful and orderly fashion. The German instinct to maintain continuity of authority and to regulate the course of a revolution which cannot be avoided, were witnessed most markedly in the army. As discontent spread in the army a number of soldiers' councils were formed. These were not only tolerated by the military authorities but later on were recognized as legal bodies by the judicial courts themselves!

The Berlin Council of workers and soldiers elected a central committee of twenty-four to control the national administration. This made a clash with the ministry of six led by Ebert inevitable. A compromise was, however, arrived at whereby, pending the convening of an All-German Congress of workers' and soldiers' councils, power was to be exercised by the Council of Six as before, the committee of twenty-four continuing in the position of a supervising body. When the All-German Congress met in December 1918 it resolved upon convening a constituent assembly on the basis of universal suffrage. This was an act of paramount constitutional significance. It proved that the German socialists were eager to establish a democracy and not the rule of the

**Congress  
of Soviets  
and Consti-  
tuent Assem-  
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'proletariat', which was the policy followed in Russia. As a temporary arrangement this Congress provided that the Council of Six should continue to govern on behalf of the Congress, that the Council should be appointed by an executive committee of twenty-seven chosen by the Congress itself, and that two political associates should be attached to each of the departments of State not directly represented in the Council of Six. The extreme socialists felt chagrined at this surrender to constitutionalism and to democracy and they refused to serve either on the executive committee or on the ministerial council. This had the unexpected result of putting the reins of power into the hands of moderate socialists. A constituent assembly elected in all the states on the basis of universal suffrage, secret ballot and proportional representation met at Weimar early in February 1919. The revolution was clearly the only sanction behind the acts of this body. Its decisions were dependent neither on the will of the princes, as in the case of the constitutions of 1815, 1848 and 1867, nor on the councils of workers as during the revolutionary period, but on the nation at large which had awakened to a realization of its united sovereignty. The essentially unified character of sovereignty in a federal state, though for purposes of administration it is expressed through two sets of institutions, is nowhere seen more clearly expressed than in the working of the Weimar Assembly that gave Germany a federal constitution. In Germany, as in other federations, the tendency towards centralization is very marked. The militant socialists are strong advocates of unification. The peculiar difficulties of Germany's international position have made these centripetal influences specially pronounced at present. The conflict between states' rights and the need for, and urge towards greater

centralization is so marked that a revision of the constitution with a view further to strengthen the central government is being seriously considered.

### CANADA

In 1763 at the end of the Seven Years' War French Canada was finally surrendered to Great Britain. Newfoundland, Nova Scotia and Hudson's Bay Territory had already passed into British possession either by conquest or colonization. Quebec, however, was the most developed and populous of these settlements. From 1760 to 1774 Canada was under military rule. A proclamation regarding the establishment of an assembly was issued as early as 1764 but it remained a dead letter till 1774. In that year the Quebec Act was passed. It provided for a wholly nominated and purely legislative council consisting of not less than seventeen and not more than twenty-three members. The official position of the clergy was recognized and Catholicism was authorized as the religion of the state. Though the criminal law of England was introduced as being more advanced, the French civil law was left undisturbed. To the French Canadians, with traditions of despotic government, this arrangement brought much satisfaction, and during the revolt of the English colonies Canada kept remarkably quiet. After the success of the American rebels, a number of loyalist settlers migrated into Canada. Their differing political and social notions soon brought them into conflict with the French Canadians. To relieve this tension Pitt got the Constitution Act passed in 1791. Under the provisions of this Act, Canada was divided into two provinces, Quebec or Lower Canada, inhabited mainly by the French, and Ontario or Upper



Canada inhabited almost exclusively by the English. In each province the executive power was vested in the hands of a Governor and an executive council appointed by the Crown and responsible to him. A bicameral legislature was also established, the upper house consisting entirely of the nominees of the Crown, but the lower one being elected on a popular basis. The Act thus established representative institutions without a responsible government. Charles Buller aptly described the system when he likened it to a fire without a chimney.<sup>1</sup> The relative calm that prevailed in Canada, when England was again at war with the American states in 1812, is mainly to be accounted for by these reforms.

Representation without responsibility secures the maximum of constitutional friction and sets on its course an agitation for reform which never ceases until responsibility is secured. Particularly in Lower Canada, where the administration was British and the legislature mostly French, the political struggles were embittered by racial animosity. In both the provinces these forces of discontent found vent in 1837 in open rebellions which had independence as their objective. These rebellions were suppressed without much difficulty, but they called the attention of the British Parliament to the unsuitability of the Canadian constitution to meet the requirements of the colonists. The existing constitution which had been found unworkable was suspended and Lord Durham was sent out as High Commissioner to survey the situation and report upon the scheme of constitutional reform. Lord Durham's report was based on two primary principles.

<sup>1</sup> Quoted by J. A. R. Marriott in *The Mechanism of the Modern State*.

Firstly he accepted the principle that the colonies must have a right to conduct their own administration according to the wishes of a freely elected legislature. It is for this reason that Lord Durham's report is called the charter of colonial self-government. His second principle ran counter to the federal tendency in Canadian growth. Knowing that there were many disaffected elements in Lower Canada, he insisted that there should be a common government for the Dominion. The first principle was of lasting value, the second was based on considerations of expediency which later on had to be modified so as to provide both for a common and separate government, that is for a federation.

The Act of 1840, which gave legislative effect to the recommendations of the Durham report, provided for a common parliament consisting of two houses. The Legislative Council consisting of at least twenty members nominated by the Crown for life was to be the upper house. The lower house was to consist of forty-two members from each province chosen on an extensive franchise. The Dominion Government was to be supreme except in matters of Imperial concern. Though the principle of responsible government was nowhere mentioned in the Act, it was established by the adoption of a practice of following the advice of the ministers who commanded the confidence of the Parliament. This act pleased nobody; the French Canadians were justly suspicious of the whole policy of the Act, and the British settlers were not content with the freedom achieved by the measure. The two provinces were ever uncongenial yoke-fellows and mutual jealousies leading to constitutional deadlock were of frequent occurrence. In the meanwhile Canada continued to

advance on the path of material progress. It was obvious that unity of policy coupled with congenial methods of administration were the requirements of the time. There was a proposal to divide Canada again into two provinces and to confer rights of full responsible government separately on both. The strength of the independence party in Quebec was, however, felt to be too strong to justify such a step in the interests of the unity of the Empire. Hence the only alternative course was federation, which was supported by all shades of Canadian opinion by 1864. It was also felt that only by organizing themselves into a strong federation could the Canadian provinces hope to acquire the western lands, which would otherwise have fallen into the hands of their more formidable rivals. At this very time the maritime provinces of New Brunswick, Nova Scotia and Prince Edward Island were considering a scheme for a closer union among themselves. Canada joined the deliberations with a view to extend the scope of the federal idea. The conference of representatives from all the provinces was held at Quebec, and under the leadership of Sir James Macdonald adopted seventy-two resolutions which were in effect the draft of the British North America Act of 1867. The draft was later considered by a meeting held in London between Canadian delegates and the Colonial Secretary. The ideal of Macdonald himself was a unitary state with a strong tie binding the colony to the mother-country. The American Civil War had just then done much to discredit the cause of federalism for a time. He encountered a good deal of opposition to his plans and had to content himself with a strong central government in a federal constitution, of which allegiance to the British Crown and Parliament was an integral part.

By gradual stages other British possessions in North America joined the federation, and now the number of Canadian provinces is nine. The law courts have helped considerably in toning down the supremacy created for the Dominion Government by sections 91 and 92 (dealing with the distribution of functions) of the Constitutional Act. With a growing feeling of common interests and culture the centrifugal tendencies may be expected to cease. But it is interesting to observe that whereas in other federations, where residuary powers have remained with the states, the tendencies of constitutional amendment are centripetal, here in Canada, because of the central government's supremacy, the tendencies are just in the reverse direction.

An interesting development in the federal evolution of Canada is the most recent movement towards the unification of the three prairie provinces, Manitoba, Saskatchewan and Alberta. This plan would, if successful, lead to unified control and economical administration.

### AUSTRALIA

Australia is the youngest of modern federations, its history commencing only from 1901. For one hundred and thirty years since its rediscovery by Cook in 1770, Australia was developing along its own lines undisturbed by any external or traditional influences.

#### **Self-govern- ment in the Australian Colonies**

The stock of population as also their institutions was almost entirely British. When the English colonies in America passed out of the control of Great Britain, Carolinas which till then had served as a penal colony of England refused to receive English convicts. New South Wales which had recently been brought under British authority began to be used as a penal colony from 1787,

and this practice continued till 1817. The land available in the colony was very extensive, and rainfall being moderate it was peculiarly suitable for sheep farming and cattle breeding. The economic progress of the Australian colonies went on unhampered. The dominant position was, however, held by the oldest colony, that of New South Wales, and for a long time all attempts at an inter-colonial organization were frustrated by its obstinate opposition. The internal organization of that colony was analogous to military rule till 1840. In 1842 a legislative council consisting of twelve nominated and twenty-four elected members was formed. In 1850 the British Parliament passed a general law granting to Australian colonies the right to choose their own form of government. Acting under the provisions of this Act, New South Wales, Victoria, South Australia and Tasmania secured responsible government in 1855-56, to be followed three years later by Queensland, which was formed in that year by separation from New South Wales. The last of the colonies to acquire the rights of responsible government was Western Australia, which secured these in 1890.

With economic development, complications of tariffs and commercial law had arisen, and it was being realized that a common administration of these and allied subjects would greatly benefit the states. In the absence, however, of any compelling reason such as external defence or internal peace, the requisite eagerness for inaugurating federal schemes was lacking. The predominant position held by New South Wales also worked against the success of the federal principle. With the discovery of gold mines in Victoria that colony developed fast in its economic and political importance

**Economic  
and military  
problems**

and thus helped to reduce the disproportion between the various colonies. In the eighties of the last century a scramble among European states for occupying the open spaces of the globe had commenced in earnest. This brought Australia face to face with a danger of foreign molestation. France occupied New Guinea and Germany threatened New Hebrides, both being parts to which Australia considered itself to be legally entitled. These circumstances coupled with the need of strengthening the credit of the country for foreign borrowing made the path of federalism smoother than in the past.

As early as 1847, Earl Grey, the then Colonial Secretary, had drafted a scheme of federation for Australia and had even presented it in the form of a bill to the Parliament. The measure, however, evoked strong opposition both at home and in the colonies. Particularly the clause which provided for a uniform tariff policy for the federation, was resented by the states. The only part of the bill which could pass was that which conferred the title of Governor-General on the Governor of the premier colony, namely New South Wales. This step only embittered the relations between the colonies and put off the favourable chances of a federation. This clause was therefore allowed to lapse in 1861. The later history of the successful adoption of a federal scheme is associated with the name of Gavan Duffy, an Irish exile of the 1848 rebellion. He was a resident of Victoria and espoused the cause of Australian federation with a perseverance and eloquent pleading which are remarkable in the personal annals of federalism. At first his schemes did not elicit the necessary support even from his own colony, but in 1862 he succeeded in getting a committee appointed charged with the responsibility of considering the ques-

tion. This committee generally approved of the idea of federation and recommended in favour of immediate action to sound the views of the other colonies. The economic and political advantages of a wider organization were even then obvious, but tariff rivalries among the bigger states, particularly between Victoria and New South Wales, and the absence of any imminent foreign danger, combined to weaken the support to Duffy's scheme. The encroachment on Australian soil committed by France and Germany in 1883, and the subsequent failure of individual states to impress the British Colonial Office of the gravity of the situation changed the perspective of the problem, and federation became a live issue. In 1883 a conference of colonial representatives was held to draft a scheme. This scheme was later on ratified by the states, excepting New South Wales, and was passed as the Federal Council of Australasia Act in 1885. Under the provisions of this Act a common consultative council for such purposes as naval defence, fisheries and extraditions was set up. This council had no executive authority and there was no provision for independent finance. The defection of New South Wales, due mainly to tariff jealousy, considerably reduced its effectiveness.

A few more years' experience convinced the New South Wales' government of the need of federation. In 1888

**The Commonwealth Act**

all states co-operated for the first time to finance a common object, the maintenance of a naval squadron. When in the same year Sir Henry Parkes, the Prime Minister of New South Wales, himself declared in favour of a policy of federation, the realization of a federal constitution for Australia became only a matter of time. But the attitude of the state of New South Wales continued

to be unhelpful till the last. In 1891 a convention attended by forty-five members was held at Sydney, but could not agree to any scheme because of keen differences of opinion about the detailed provisions. Thus New Zealand, which eventually had to be left out to form a separate unit in the British Empire, was prepared at the Sydney Conference to back a scheme of federation only with the home country itself. Questions of free trade and labour policy also divided the states. A financial crisis having occurred, the chances of a successful piloting of the federal scheme were for the time despaired of. But the idea once accepted was not given up. The problem of the immigration of coloured races and the need of having a local supreme court only accelerated the pace of federalism. In 1895 a meeting of Prime Ministers of the various Colonies was arranged at Hobart; this was followed by a properly constituted convention at Adelaide in 1897. The convention adopted a draft which was first presented to the legislature of the states. As amended by the state legislatures the scheme was reconsidered by the convention, and again submitted to a plebiscite in all the states. New South Wales having made certain difficulties about some clauses of the draft, these had to be amended and again confirmed. After all this lengthy process was completed, the draft was presented to the British Parliament in the shape of a bill, and passed as the Commonwealth of Australia Act in 1900. The present constitution of the Australian federation is governed by this Act, as modified later in some particulars. As in other federations so in Australia, the tendencies of constitutional revision are decisively centripetal. Two otherwise divergent tendencies concur in demanding greater unification. The socialist party, keen on securing a common progressive policy, and the



constitutionalists, alive to the need of greater co-ordination between the commonwealth and the state governments, join in support of a widening of the functions of the central government. The Labour Party would even favour the establishment of a unitary in place of the present federal constitution. State particularism and inter-state jealousies are yet too strong for the success of any far-reaching schemes of this nature: but it is obvious that in matters of industrial, social and financial legislation, the federal government will have to be clothed with much more definite functions if frequent deadlocks are to be averted. The unique importance of the Australian federation consists in that it is the most advanced federal type within the framework of the British Empire.

It must be observed in this place that according to the strict letter of the law both Canada and Australia are dependencies of Great Britain, whose Parliament has granted them constitutions which may in pure theory at any time be revoked or amended. This, however, is now a mere fiction, and the British Parliament will never think of introducing in the respective constitutional Acts any changes that the constituted authorities in the two Dominions and their people do not desire. Practically the position of the self-governing Dominions in the British Empire has been that of independent states since the decisions of the Imperial Conferences of 1926 and 1930 have been embodied in the Statute of Westminster. In considering Canada and Australia as federal states their legal dependence on the British constitution has, for the most part, been ignored.

## CHAPTER V

### FEDERAL EXECUTIVE

It will be remembered that one of the features of federal organization, which its incomplete manifestations lack, is the possession of a strong and dependable executive. Deliberative bodies are found associated with many a confederation, but the emergence of an independent executive, furnished with all the attributes of political authority and exercising control over the citizens instead of on the states, is the distinguishing mark of a federation. As in a federation there are many recognized divisions of interests and loyalties, the need of a strong central executive is always great. But there are dangers involved in too strong an executive as it might crush the liberties of citizens and states, the protection of which is one of the chief advantages claimed for federation. Hence the problem of federal executive is to seek a happy compromise between strength and responsibility. How this has been achieved in the major federations of the present day is outlined in the succeeding paragraphs.

**Strength  
and respon-  
sibility**

#### SWITZERLAND

Articles 95 to 105 of the Swiss constitution<sup>1</sup> provide for the organization of the federal executive. The supreme directing and executive power of the Swiss Confederation is exercised by a Federal Council composed

<sup>1</sup> For summaries of constitutional provisions given in this and succeeding chapters the text followed is that contained in *Select Constitutions of the World*, Irish Provisional Government Publication, 1922.

of seven members. These members are appointed for three<sup>1</sup> years by the two houses of the legislature in joint session, and are chosen from all Swiss citizens eligible for the National Council, which is the popular house in the federal legislature. Not more than one person from each canton may be chosen for the Federal Council. The Federal Council is completely renewed after every general election of the National Council. Vacancies arising within the normal period of three years are filled at the next meeting of the Assembly, the Federal legislature, for the remainder of the period of office. The members of the Federal Council may not, during their term of office, occupy any other position, whether in the service of the Confederation or a canton, or engage in any other calling or profession. The President of the Confederation and Vice-President of the Federal Council are nominated by the Assembly for one year from among members of the Federal Council. The President of the Confederation presides over the Federal Council. An outgoing President cannot be elected President or Vice-President for the following year. The same member cannot act as Vice-President for two consecutive years. At least four members of the Federal Council must be present for the valid transaction of business. Members of the Council have the right to speak, but not to vote, in both chambers of the legislature, as well as the right of proposing motions on subjects under discussion.

In particular the duties and powers of the Federal Council are as follows. It provides for the execution of the laws and decrees of the Confederation; of the

<sup>1</sup>The duration of the National Council and of the Federal Council is now (1932) four years, instead of three.

judgments of the federal tribunal, and of agreements and arbitration awards upon disputes between cantons. It makes such appointments as are not entrusted to the federal legislature and the judicial tribunal. It watches over the external interests of the Confederation, particularly in regard to the observance of international agreements, and has general charge of foreign affairs. It ensures the external safety of Switzerland, and the maintenance of its independence and neutrality. In matters of urgency, arising when the federal legislature is not in session, the Federal Council has authority to call out troops and employ them as it may think necessary, provided that it must convene the legislature immediately if the number of troops called out exceeds two thousand, or if they remain mobilized for more than three weeks. It has charge of the federal military forces and of all branches of the administration thereof which are vested in the Confederation. It examines the laws and the ordinances of the cantons which are required to be submitted to it, and supervises the branches of the cantonal administration which are placed under its control. It administers the finances of the Confederation, prepares the budget and submits accounts to the legislature. It gives an account of its work to the Federal Assembly in each ordinary session, presents to it a report upon the internal conditions and foreign relations of the Confederation, and recommends for consideration such measures as it thinks useful for promoting the general welfare. It makes special reports when either house of the legislature so demands.

The business of the Federal Council is distributed among its members by departments, but all decisions emanate from the Council as a whole. Individual departments may be authorized by the legislature to control certain

affairs by themselves, subject to a right of appeal to the federal courts regulated by legislation. The Council and the various departments may call in experts whenever they like. The Federal Chancellory, under the Chancellor of the federation, acts as the Secretariat of the Federal Assembly and the Federal Council. The Chancellor is elected for three years by the Federal Assembly and holds office concurrently with it. The Council generally supervises the Chancellory. The federal government has only such powers as are specifically conferred upon it by the constitution. The Confederation is prohibited from maintaining a standing army, and the limit of standing troops maintained by each of the cantons is three hundred. The federal army thus consists of the cantonal corps and of all Swiss who are eligible for military service. Water-power, forests, embankments, public works of a general utility, customs, liquor monopoly, railways, regulation of conditions of labour, social insurance, posts and telegraphs, regulation of automobiles and cycles, navigation, the issue of paper money, the state bank, weights and measures, gunpowder monopoly, stamp duty (excepting on documents concerning landed property and mortgages) civil and commercial law, copyrights and patents, penal law, infectious diseases, adulterations and exile—these are the functions set apart for federal action.

The most characteristic, and in fact unique, feature of the organization of the Swiss executive is its collegiate character. The model for such a form was ready at hand in many of the cantonal constitutions, where the executive was composed of the chief elected heads of departments, working under close control of the legislature. It was here that the peculiarly Swiss version of responsibility

**Collegiate  
executive**

was developed. To be corrected by the supreme deliberative body was not looked upon as a vote of censure, so long as that body continued the executive in office in view of the latter's administrative capacity and trustworthiness. Though according to the constitution the President of the Confederation, who is also the President of the Federal Council, and the Vice-President of the Council are elected afresh by every Federal Assembly, for its own period, which normally is three years, still by an unbroken convention the Vice-President succeeds the President. In respect of the composition of the Federal Council, there is only one statutory restriction as noted above, namely, that no state can be represented in the Council by more than one member. This provision itself is very noteworthy, as it introduces the federal principle in the organization of the executive. But Swiss practice has been more significant in this respect than even the Swiss constitution. Some cantons like Zurich and Berne are always represented. The French-speaking canton of Vaud, and Italian Ticino also secure a place in the executive as a rule. One representative of the Catholic states is also always included. If to these customary limitations on the choice of the Federal Councillors is added the influence of the practice of choosing members of the executive council almost invariably from members of the federal legislature, some explanation will be found for the continued tenure of office of the members of the Federal Council. Since 1848, there have been only two cases in which retiring members of the Federal Council who offered themselves as candidates for a fresh election were rejected by the Federal Assembly. On the other hand there are instances in which members have been continued in office for over thirty years. It is in view

of this practice that one writer<sup>1</sup> has described the Swiss as retaining their public men in office till they verge on senility. The non-parliamentary, and in a measure non-political, conception of responsibility, and the relative paucity of suitable candidates must be accepted as explanations of this practice.

The term 'President of the Confederation' has only a formal, not a political significance. Till 1888, it was a practice to allot foreign affairs and the political department to the President for the year. But the Swiss insistence that a person who has specialized by experience in the control of any department should, so long as he is a member of the Executive Council, be continued at the head of that department has put a stop to that practice. It is true that the Confederation is formally represented in international intercourse by the President, who is addressed as 'Excellency' in diplomatic correspondence, but the department concerned with those relations is controlled by some other member, except when the member in charge of the foreign department happens to be the President for the year. In view of the smooth and traditional course of Switzerland's international policy of neutrality, this system has, so far, led to no untoward result. The President is paid a salary of about £80 per year over and above the £1,000 which is the normal yearly salary of a Federal Councillor. All the members of the Federal Council are entitled to sit and speak in both houses of the legislature. They cannot, however, vote in either of them. The main business of the Federal Council in respect of legislation is to propose such measures as they feel necessary, and to advise the legislature on all proposals that may be

<sup>1</sup> Banjous, quoted by Sir J. A. R. Marriott in *The Mechanism of the Modern State*.

brought forth by members of the legislature. While a proposal is under discussion the Federal Councillors give such guidance as they individually feel necessary, over and above the lead given by the Council as a whole. Very often, therefore, members of the executive are found supporting rival views, though when a proposal is finally adopted the whole Council gives effect to it by loyal and concerted action.

The constitution insists upon collective action, but in practice every member is responsible, in the Swiss sense, of course, for his own department.<sup>11</sup> A peculiarity of the composition of the Swiss executive is that members from all the prominent parties are given place in its composition. This would have been unthinkable in a country where responsibility is construed in the English way. But in Switzerland, where members of the executive are chosen mainly for administrative efficiency, this lack of political harmony in the administrative team does not count as a defect; on the contrary, by placating all the dominant sections in the legislature it helps to establish that intimate confidence between the paramount legislature and their executive servants which is such an outstanding characteristic of the Swiss constitution.<sup>12</sup> In the organization of the various departments of the Swiss executive there is no such office as that of the Permanent Under-Secretary in Great Britain, the members themselves being both the political chiefs and administrative heads of their departments. Recently the volume of business in the seven principal departments (viz., Political and Foreign, Justice and Police, Interior, War, Finance, National Economy, and Posts and Railways), is increasing, and a suggestion to appoint Permanent Secretaries is being put forward. How far this dissociation between

**Its responsi-  
bility**



political and administrative control commends itself to the Swiss mind remains yet to be seen. But there is no doubt that it has a very intimate bearing on the whole spirit of the Swiss constitution, and therefore it may be expected that though the overworked Swiss ministers may be relieved of part of their burden by an increase in secretarial staff, responsibility, administrative as well as political, will continue to be vested in the Federal Councillors. Such a readjustment of a purely administrative character is all the more feasible in Switzerland, inasmuch as the distribution and transaction of executive business in that country is regulated by the Executive Council itself, as in Germany, and not by the legislature as in the United States.

<sup>11</sup> If the Swiss executive is marked out from a parliamentary executive by its non-political conception of responsibility, it is equally distinguished in its contrast with the presidential executive in its non-acceptance of the theory of separation of powers. The Federal Council has to submit to close scrutiny and control at the hands of the legislature even in matters of administrative detail. Every year by law, and oftener if required, the Council has to submit to the Assembly a detailed report on the working of the administration. This is freely criticised by the Assembly, and points raised in such discussion are expected to be acted upon in the future. Thus not only the policy, but even the details, of the administration are sanctioned by the legislature in the same way as the whole management of a joint-stock company is under the control of the shareholders. The legislature thus relieves the executive of a part of its burden. The executive, on the other hand, has some legislative and judicial functions to perform, which

**Unified  
functions**

would shock the shades of Montesquieu. The function of pronouncing on the constitutionality of cantonal legislation and administrative action is vested in the Executive Council, which also acts as a court of administrative justice in many cases. In 1914 an amendment to the constitution was passed whereby this jurisdiction of the executive was to be transferred to the proper judicial authorities, but no legislative action has been taken to implement the amendment. Appeals from the decisions of the Council are preferred in some specified cases to the Federal Assembly, which thus shares in the judicial authority of the state, and in other cases appeals lie before the Federal Judiciary. The share of legislative burden borne by the executive is only too obvious; no legislative proposal is even discussed without a previous report on the same by the Federal Council. In addition this, in Switzerland as elsewhere, the powers of subsidiary legislation and judicial trial enjoyed by the executive are increasing. The divergence in Switzerland from the American practice of separation of powers has so struck one author<sup>1</sup> that he has described the situation as an organic confusion of powers.

In Switzerland there is no parallel organization of the subordinate federal executive, the cantonal governments **Federal and cantonal governments** being utilized as a rule for carrying out federal decrees. This naturally entails supervision and control of cantonal administrations, which has been carried out so far with remarkable tact. In case a canton proves recalcitrant the method provided for its reduction is peculiar. The subventions given to the cantons from the federal funds are forthwith stopped, and if this step,

<sup>1</sup> Dr. Dubs, quoted in Lowell's *Governments and Parties in Continental Europe*.

which is serious enough for the finances of the small cantons, fails to have the desired effect, a confederate force is moved into the unruly canton, not to fight it into subordination, but to be quartered on the meagre resources of the canton till its government yields. The constitutions of the various cantons are guaranteed by the Confederation. All appointments, not otherwise provided for, are made by the Federal Council, and with the growing scale of public business this authority of the Council tends to grow in importance. The universal movement towards a widening scale of economic and political, as also social and cultural interest, has not left Switzerland untouched. There also it is being recognized that the canton is too small a unit for the administration of many matters, and the powers of the federal government tend to grow.

The non-political version of responsibility adopted by the Swiss constitution in organizing its executive is indicated above. It is doubtful, however, whether on that account we can acquiesce in the description of the Swiss executive as, 'a committee consisting of the permanent heads of the civil service'<sup>1</sup> or as an 'executive committee of the Federal Assembly'.<sup>2</sup> That, taken literally, these two views would contradict each other, and that in the actual working of the Swiss executive there is some basis for both are matters which are only too obvious. The members of the Federal Council indeed perform many of the duties that are left to be attended to by permanent heads of the civil service in other countries, and especially in Great Britain. But though the members are chosen in practice mainly—though not exclusively, be it remembered—for their administrative

**Executive  
and  
legislature**

<sup>1</sup> Marriott, op. cit

<sup>2</sup> F. A. Ogg, *Governments of Europe*.

capacity, legally and constitutionally their tenure is dependent on the will of the legislature. Considerations other than administrative efficiency, such as political affiliation, religious persuasion and cantonal citizenship, weigh in the appointment of members. Though the responsibility for policy belongs, in the long run, to the Federal Assembly, still the Federal Councillors are expected to give a lead and an advice, which it would be out of place to expect from mere permanent heads of departments. Moreover, the Councillors are expected to back their views by advocacy on the floor of both houses, which can never be permitted to civil servants. The other view that the Federal Council is an executive committee of the Federal Assembly may appear to be justified in view of the fact that legally the Council is elected by the Assembly and in practice the persons elected are at the time of their election members of the Federal Assembly. The facts that a very intimate touch is maintained between the Council and the Assembly, and that the executive bows down to the legislature in matters of policy as well as of detail are calculated to lend further strength to this view. But it must be remembered that it is not legally necessary that the members of the Federal Council should be members of the Assembly at the time of their election, and in any case after their election to the Council they cease to be voting members of the legislature. It must also be remembered that though the Assembly is a superior body which checks and corrects the executive council, and in some cases hears appeals from the latter, still the Council has in practice and, substantially, in law, a well-marked out field for its almost independent activity. How long the simplicity of Swiss public life will continue to support a non-political, or to put it more correctly, a multi-political, executive in office it would be

hazardous for an outsider to say. But in its present form the Swiss executive must be said to depend almost equally on two factors: firstly on the readiness of the legislature to keep in office a member who, whatever his politics and whatever his first thoughts, has been an efficient administrator and a reliable servant of the formulated will of the legislature; and secondly on the capacity for political self-abnegation possessed by the Councillors themselves, who can support the twin role of administrators and politicians without detriment to the proprieties of either. To say that the Swiss executive is not responsible to the legislature in the English sense, is of course correct. But that it is responsible, nay, as some would put it, even subservient, to the will both of the legislature and of the people at large is equally plain.

#### UNITED STATES

Article II of the American constitution provides for the executive organization of the federal government.

**Summary of  
Constitutional  
provisions**

The executive power shall be vested in a President. He shall hold office for four years, and together with the Vice-President shall be elected as follows. Each state shall appoint, in such a manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and representatives to which the state may be entitled in the Congress; but no Senator or representative or person holding an office of trust or profit under the United States shall be appointed an elector. Voting is by ballot, separately in each state. Every elector must vote at least for one candidate from outside his own state, either for the presidentship or the vice-presidentship. An absolute majority of electors in all the

states together is necessary to ensure election for either of the two offices. If an absolute majority is not available for any candidate, then from among the first three names on the list, the House of Representatives chooses, by an absolute majority of states, the person who is to occupy the presidency. If there is no absolute majority for the vice-presidency, the Senate proceeds by an absolute majority to choose a Vice-President from among the first two candidates. The time of choosing the electors and the day on which they will vote are determined by the Congress, the day of voting being the same in the whole of the Union. Only natural-born American subjects, of thirty-five years of age and over, and residing in the United States for at least fourteen years are eligible for being elected as President. In case of the removal, disability or death of the President, the Vice-President acts as the President. If both the President and the Vice-President are disabled from acting owing to one reason or another, the Congress may by law provide for the case. The compensation of the President can neither be increased nor decreased in his term of office.

The President is the commander-in-chief of all the armed forces. He can demand the opinion in writing of the principal officers in each executive department upon any subject relating to their respective duties. He has also the power to grant reprieves for offences against the United States except in cases of impeachment. The President has power by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur. Ambassadors, public ministers, consuls, judges of the Supreme Court, and other officers created by law, whose appointment is not otherwise provided for, are nominated by the President and are appointed by him with the advice and consent of the

Senate. But the Congress may vest, and has by law vested, the appointment of inferior posts in the President alone, in the courts of law or in the heads of departments. The President has power to fill up all vacancies that may happen during the recess of the Senate by granting commissions, which shall expire at the end of their next session. The President has from time to time to give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he may think proper. The President, the Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes or misdemeanours.

The number of states at present included in the American Union is forty-eight, and these are organized in a governmental system which is not only federal, but which adopts the principle of separation of powers to its utmost possible extent. The original framers of the American constitution were disgusted with the extreme impotency of a congressional central government, witnessed during and immediately after the revolutionary struggle. They were, therefore, keen on having a strong central government, and naturally discarded the proposal to make the President's office dependent on the will of the Congress. In thus resolving upon a non-parliamentary President they were also moved in a very considerable measure by the desire to have an executive head who would not only be strong but would also be in a position to use his

strength in the interests of the nation, free from any party bias. In this sense the model before the framers might be said to have been the English kingship as vigorously enjoyed by George III. But the principle of an elected President was already present in many colonial constitutions and the position of the Governor in some colonies was not radically different from that of the British Crown. The method of presidential election finally adopted by the American constitution is that of indirect election, as may be seen from the constitutional provisions sketched above. The liberty left to states to provide for the method of choosing their own electors was utilized by many states, who for many years vested the right of selecting the electors in their legislatures. Gradually, however, the electors came to be chosen on a general ticket throughout a state by popular suffrage. The party system which permeates American political life has, however, brought about a change in the practice of electing the President which would have startled the fathers of the constitution. Two things they wanted to avoid in the American President: partisanship and subservience to the popular electorate. Indirect election by the people at large was provided with a view to make the President's election dependent upon the impartial electors of all the states put together. The election of the electors as now conducted has, however, reduced itself to an unmeaning show. When a voter casts his vote for an elector, he does not choose for himself a representative who would take the trouble to weigh the merits of the various presidential candidates and to make a selection, but he indicates his preference for a particular presidential candidate, and selects an elector who binds himself to vote for the presidential candidate in whose favour the primary voter has given him a mandate. It is a



general practice now for the elector's ticket to be superscribed by a presidential candidate's name, so that there may be no mistake on the part of the voter as to which presidential candidate he is helping by his vote given in the first instance to the electoral candidate.

The election for the presidential electors takes place on the Tuesday after the first Monday in November, of the year previous to the one in which the presidentship changes hands. The presidential term always ends in the year following a leap year, so that elections for the presidential electors take place in the November of the leap year. Voting takes place all over the country on one and the same day. In June the two American parties hold their nominating conventions at which the party's choice for the presidentship is settled. Once this is done the election of the electors reduces itself to a weighing of the strength of the rival presidential candidates. Every state has, as noted above, as many votes as its representatives in the House of Representatives, which is elected on a popular basis, and in the Senate, which contains two members from each state. Hence the more populous states have a large share in determining the ultimate choice of the nation. Moreover, as the electors are chosen on a general ticket in the whole state, the ballot of every state is either entirely in favour of one party or the other. All political activity concerning presidential election, therefore, centres in the doubtful states. The votes cast in favour of the defeated electoral candidates in the states have no influence on the election of the President, who sometimes is elected by an absolute minority of the voters, though he is later, as the constitution insists, elected by an absolute majority of the electors. President Wilson was one of

Indirect  
election

many Presidents thus chosen by a minority of the citizens. When the result of the ballot for the choice of electors is known, the fate of the presidential election is also virtually decided two months in advance of the formal election in the following January, and four months before the inauguration of the new Presidential regime on March 4 of the year following the leap year.

The President is elected for a period of four years, and during this period is irremovable except by the method of impeachment. In the history of the American presidency there has been only one instance of a President having been impeached, that of Andrew Jackson, and he was acquitted. Normally, therefore, the President may be said to be irremovable. The constitution is silent on the subject of eligibility for re-election, and deliberately so. Hamilton and other framers of the constitution were in favour of a life-long chief magistracy, but the idea was found to offend too violently against the republican prejudices of the colonists. Almost all contemporaries of the framers, however, concurred in wishing to their first President, George Washington, a life-long tenure of office. His famous denial to offer himself for the third successive presidential election has, nevertheless, acquired a traditional value in American constitutional procedure which has withstood some determined attempts to overthrow the same, as in the case of General Grant. It is confidently asserted by many constitutional writers that the failure of General Grant's friends to secure support for a third consecutive election of their candidate, whose great popularity was undoubted, may be said to have settled once for all the question about the validity and permanence of this practice. If, during the closing period of the second presidential

**Constitutional position**

term of a popular statesman, no grave emergency either in the internal or international sphere arises, this expectation may indeed be fulfilled. But it may at least be mentioned that where personal popularity has not availed to secure a third successive election, national need may conceivably compel the Americans to take such a step. The method of impeachment is that the House of Representatives impeaches the President before the Senate, which is presided over for this purpose by the Chief Federal Judge. A verdict by two-thirds majority is necessary to convict. A conviction entails removal from office and liability for further prosecution under the ordinary law. In case of removal or disablement of the President before the expiry of his normal term of four years, the Vice-President succeeds for the remainder of the period. In case the Vice-President is also unavailable for one reason or another, the Congress has provided for an order of precedence, beginning from the Secretary of State, in which the chief departmental heads succeed to the presidency.

The President's legislative authority consists in making suggestions to the Congress as to the need of legislation on some point. This is ordinarily done through the Presidential Message reviewing the annual administration, that is yearly sent to the Congress. In former days, this used to be the American counterpart of the Speech from the Throne of the English kings. The practice of delivering addresses, which had long fallen into desuetude, was for a while revived by President Wilson. The Congress rarely pays any heed to the presidential suggestions for legislation. The only other legislative function which the President performs is the exercise of the limited right of veto placed in him by the

**Legislative  
authority  
of the  
President**

constitution. It is true that the veto is limited by the requirement that it must be exercised within ten days of the receipt of the bill by the President and that it is nullified by a two-thirds' majority in the Congress reiterating its decision after a perusal of the President's observations on the same. In practice, however, in very few cases has the Congress outvetoed the President. It will be observed that though the President can convene extraordinary sessions of the Congress and can prorogue it if the two houses disagree as to the time of the adjournment, he cannot dissolve the Congress. A certain amount of subsidiary legislative and judicial functions are now being exercised by executive departments in America as in other countries. These activities of the American executive are validated by the judiciary as being only quasi-legislative and quasi-judicial respectively. The main and important work of the President, however, continues to be far more exclusively executive than in the case of any other head of a modern administration. He is the sole representative of the Union in respect of foreign affairs. As a declaration of war can only be made by the Congress and as Treaties can be concluded only with the support of two-thirds' majority of the Senate, the President feels the need of keeping himself in touch with the legislature and particularly with the Senate. The Foreign Affairs Committee of the Senate exercises great influence on the course of foreign relations. How great this influence is, and how very insecure is the position of an American President in this matter was best illustrated by the failure of President Wilson to carry the Senate with him in his support of the Treaty of Versailles. The House of Representatives also from time to time passes resolutions expressing its views on important outstanding

matters of foreign policy. Though these have no constitutional value, yet the need of carrying the Congress with the Executive in implementing decisions in foreign policy, by means of commercial, financial and such other legislation, leads to some indirect weight being attached to such resolutions.

The actual work of administration is divided into various departments at the head of which is a secretary nominated by the President, appointed by the Senate, and removable by the President himself. The number of these departments is settled by the Congress from time to time and is at present ten. The departmental secretaries are required to report on the working of their departments to the Congress annually and when specially called upon to do so, but they are not members of the Congress nor can they attend its sessions, and they are entirely responsible to the President. The normal way of communication between the executive and the legislature is that the secretaries concerned meet a delegation or a committee of the legislature. Theoretically the secretaries are merely the servants of the President, who alone is responsible for the administration. But in practice, owing to the growing pressure and diversity of business, the secretaries tend to be colleagues rather than servants of the President. In particular, as the secretaries are chosen from among the leaders of the President's own party, they very soon form themselves into something like a cabinet. The President, moreover, in many cases has been known to be so busy attending to office-hunters, who come upon him 'from the skies, down the chimney and from the bowels of the earth', as to be required to leave most of the administration to the secretaries. The Secretary of State, who is in

**Depart-  
mental  
secretaries**

charge of foreign affairs, is the chief of the secretaries. The Treasury, War, and Navy are other important departments and the Attorney General is also an important office-bearer. There is no collective existence or responsibility for the departments, and they owe no allegiance to the legislature. The salary of the President is \$75,000 a year, plus \$25,000 as travelling allowance, and that of the secretaries \$8,000. The Vice-President has no other function but to preside at the meetings of the Senate, of which body he is not a member, and to give (as in the case of Vice-President Coolidge succeeding President Harding in 1923), a casting vote in case of a tie. Vice-Presidents have usually been men of a distinctly lower political eminence than the Presidents, and whenever it has been necessary to put them in the presidential chair on account of the removal or disability of the President a sudden deterioration in administration has resulted.

The spoils system of American public life weakens the strength and efficiency of the administration a good deal. It is indeed true that with the exception of patronage, the President usually conducts the administration with a fairly non-partisan and national policy. But the thorough change in all the offices, some of them of such a non-political character as Postmasterships and Customs officerships, and their being filled by men whose recommendation to office lies more in their political services to the successful party than in their administrative capacity, leads to discontinuity, inefficiency and weakness. A large number of offices, it is true, have already been taken out of the system of patronage, but even now more than twenty thousand posts have to be filled by presidential nomination. An attempt was made to

remove a large number of subordinate posts outside the influence of politics in 1883, when a Civil Service Commission was set up to attend to the recruitment of those offices. So all-pervasive, however, is the influence of party politics in America that it was provided that out of the three members of the Commission not more than two were to belong to one and the same party. To get a non-party organization for dealing with any kind of public business has, it would seem, become practically impossible in the United States. The Senate, which finally sanctions all the important appointments made by the President, exercises its influence in a way which is popularly known as the 'courtesy of the Senate', but which works itself out practically as a tyranny. It is almost an unwritten rule of the constitution that all appointments made to federal offices in any state should be made with the advice of the representatives from that state in the Senate, who belong to the President's party. As all Senators have an interest in having their patronage thus enhanced, they combine in securing this consideration at the hands of the President. There is a very wide scope for the exercise of such patronage in America because of the existence of a complete system of federal administration for all federal matters, unlike Germany and Switzerland where federal decrees are as a rule administered by state governments. Even in the administration of such subjects as the income-tax, which is common both to the state and federal governments, two separate organizations exist. So great is the insistence placed on the duality of administration, that if an offence is punishable under both a federal and a state law, and the offender is tried for the same in a state court, he can theoretically at least be again prosecuted in a federal court. Unless some drastic steps are taken to put all

administrative appointments outside the pale of party politics neither the tone of public administration, nor the freedom of action of the President will improve appreciably.

As much of the work of administering the various services is included in the field of state governments,

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there is not much of crucial significance left for the federal executive to do in peaceful times. But it has been noticed that even in this limited field there are many cases of disharmony between the executive and the legislature. It is true that no-

body normally attends to the debates or decisions of the Congress with any seriousness as it is not empowered to take any action. But if the Congress is hostile it can check the action of the President so as to reduce him to conducting only the routine administration. Such cases, though not many, have by no means been exceptional. A strong and popular President, if backed by a sympathetic legislature, may even in peaceful times throw a good deal of vigour into his administration, but usually the American presidency has appeared to an advantage in times of external or internal crisis. On such occasions not only is the public opinion inside and outside the Congress more amenable to the President's proposals, but the special powers which the constitution vests in the President to secure the safety of the state and the integrity of the constitution, have been so widely construed as to raise the President temporarily to the position of a virtual dictator. It is a moot point whether an act which, in itself, is unconstitutional can be done by the President under cover of his extraordinary power. The consensus of opinion is against the legality of such action; still, Abraham Lincoln did take many such steps,



which later on were validated by the Congress, <sup>1</sup> It cannot be denied that the virtual concentration of authority in times of crisis which the American constitution allows is of great utility, and during the course of a crisis the American President can face the situation with greater assurance than a parliamentary executive. But even the conclusion of troubles, say by means of a treaty, cannot be achieved by the President without the co-operation of the Congress, which might, however, be out of sympathy with him. The momentous failure of President Wilson to carry the Congress with him, in the matter of the Treaty of Versailles, is an apt reminder of the inherent weakness of an executive that cannot count on the secure co-operation of an all-powerful legislature. The international isolation so far enjoyed and boasted of by America is crumbling, and various grave issues of internal and external significance are arising in American politics which can be settled efficiently and energetically only by an executive which can claim to speak on behalf of the whole American nation. The action of President Hoover in consulting the leaders of the two houses of Congress before announcing his offer of a moratorium to the debtor nations is very significant in this respect. The dissociation of the President from the Congress is to be deplored not so much on account of the consequent loss of healthy opposition, as for the frequent lack of support from the legislature which results from this doctrine of separation.

Many an American President has struggled hard to make his job a success, and owing mainly to the economic, geographical and political advantages of America's position they have been fairly successful till now. But the temptation, even the necessity, of

<sup>1</sup> Bryce, *American Commonwealth*.

attending to party politics has been a great drawback. It might be doubted whether since the time of the first President, George Washington, there has been another who has risen to the expectations of an independent and non-party chief which were entertained by the framers of the constitution. Some, indeed, have covertly yet regularly managed their party's affairs and conducted its tactics from the presidential palace. The position of the President is so high and so coveted that in attaining it ambition has often had to scale many a dark political back-stair. The convention that the same candidate may be elected twice in succession, but not for a third time, has been a failure. Far better is the practice followed by the South American federations whereby a president may be elected any number of times but not for two consecutive periods. The party system having reduced the significance of the actual formal presidential election, the four months that elapse between November and March on the eve of a new presidential period are practically no man's government, particularly if the new choice belongs to the party which for the time being is out of office. Men who take congenially to association with party bosses and their methods, and those who are safe and tactically suitable rather than brilliant have been normally chosen as presidential candidates. To some extent this is a weakness of all representative democracy, but if the road to the chief magistracy lies through the open forum of a legislature, the chances of securing the best available talent are appreciably improved. Till now, as noted above, the federal executive in America has secured stability, and to a lesser yet considerable extent, efficiency in administration, and in any case it has fostered progress. It is more than one can say, whether, in the

**Difficulties  
of the  
President**

future when America is linked with the rest of the world, the same organization of the executive can be expected to yield equally satisfactory results.

### THE GERMAN EXECUTIVE

A unique feature of the constitution of the German Reich is that it offers to the people of other countries the opportunity of joining the German federation by a law of the Reich. State authority is exercised in the affairs of the Reich through the institutions of the Reich on the basis of the constitution of the Reich, and in state affairs by the institutions of the states on the basis of the constitutions of the states. The laws of the Reich are carried into execution by the state authorities, unless these laws decree otherwise. The Government of the Reich exercises control in those affairs in which the Reich has legislative power. The Reich has exclusive legislative power as regards foreign relations, colonial affairs, regulation of citizenship, military organization, monetary system, customs, posts and telegraphs. As regards the following subjects the Reich exercises authority concurrently with the states: civil rights, penal law, judicial procedure, passports, poor relief, the press, associations and assemblies, health and social services, labour laws, vocational representative bodies, law of expropriation, formation of companies, commerce, weights and measures, banks, paper money, exchange, industry and mining, insurance, navigation, coastal fisheries, railways, airways and motor traffic, national and military roads, theatres and cinémas. Where there is need for the issue of uniform regulations, the Reich has legislative power as regards sanitary administration and the maintenance of public order and

**Summary  
of consti-  
tutional  
provisions**

security. The Reich may lay down fundamental principles in respect of religious associations, education, public services, land laws and taxation in special cases. In so far as the laws of the Reich are carried into execution by state administrations, the Government of the Reich may issue general instructions for the guidance of local authorities. Officials entrusted with the direct administration of the Reich in the various states must, as a rule, be citizens of the state in question.

The President of the Reich is elected by the whole German people. Every German who has completed his or her thirty-fifth year is eligible for election as President. Details are determined by the law of the Reich. These lay down that an absolute majority of votes at the first ballot, and a plurality at the second, if held, is required to elect. In case of a tie at the second ballot the decision goes by lot. The President when entering upon his office takes the following oath before the Reichstag:—'I swear to dedicate my powers to the welfare of the German people, to augment their prosperity, to guard them from injury, to maintain the constitution and the laws of the Reich, to fulfil my duties conscientiously, and to do justice to every man.' The President holds office for seven years, re-election being permissible. The President may, upon the motion of the Reichstag, be removed from office before the expiration of his term by the vote of the people. The resolution of the Reichstag in this connexion is required to be carried by a three-fourths' majority of votes. Upon the adoption of such a resolution, the President ceases to exercise his authority. If the people refuse to endorse the resolution of the Reichstag, the favourable vote amounts to a re-election of the President, for a new term of seven years, and the Reichstag is thereupon dissolved. Penal proceedings

may not be taken against the President without the consent of the Reichstag. The President may not, at the same time, be a member of the Reichstag. The President represents the Reich in international relations. He concludes alliances and other treaties with foreign powers in the name of the Reich, and accredits and receives ambassadors. The declaration of war and the conclusion of peace are dependent upon the passing of a law of the Reich. Alliances and treaties with foreign states which refer to matters in which the Reich has legislative power require the consent of the Reichstag. Where no other arrangement is made by law, the President makes the appointments of officers and dismisses them, though he may delegate his authority in this behalf to some other body. The President has supreme command over the armed forces of the Reich. In the event of a state not fulfilling the duties imposed upon it by the constitution or the laws of the Reich, the President of the Reich may make use of the armed forces to compel it to do so. Where public security and order are seriously disturbed or endangered, the President may take the necessary measures for their restoration, intervening in case of need with the help of armed forces. For this purpose he is permitted, for the time being, to abrogate either partially or wholly the fundamental rights of personal liberty, inviolability of residence, secrecy of private communication, freedom of expression of opinion, peaceful assembly, free association, and security of property. Any such extraordinary measures of armed intervention or abrogation of fundamental rights must be immediately laid before the Reichstag, and if that body disapproves of them they must be annulled. In cases of emergency state governments also are empowered to take extraordinary action as indicated

above, but such measures have to be abrogated on demand either of the President or the Reichstag. The President exercises the right of pardon. The grant of amnesty by the Reich requires to be effected by a law of the Reich.

All orders and decrees of the President, including those relating to the armed forces, require for their validity the counter-signature of the Chancellor, or the competent minister of the Reich. The counter-signature entails the undertaking of responsibility. In case of disability of the President, he is represented in the first instance by the Chancellor of the Reich, and if the disability is of a continuing character, his representative is appointed by a law of the Reich. The Government of the Reich consists of the Chancellor of the Reich and the ministers. The President appoints and dismisses the Chancellor, and on the latter's recommendation, the ministers. The Chancellor and ministers require the confidence of the Reichstag, and must resign on the confidence of the house being withdrawn by a specific resolution. The Chancellor presides over the business of the government and conducts it according to rules framed by the government and approved of by the President. The Chancellor determines the main lines of policy and for that he is responsible to the Reichstag. Within the limits of the general policy so fixed, the ministers are free to administer their departments according to their own judgment, for which they are individually responsible to the Reichstag. All matters in which the government is collectively responsible, and matters affecting more than one department, must be submitted to the government for decision. The decisions of the government are arrived at by a majority of votes, the presiding officer having a casting vote in case of a tie.

The President of the Reich, the Chancellor and the ministers may be arraigned before the Supreme Court for culpable violation of a law or of the constitution. The motion for arraignment must be signed by at least one hundred members and the motion must be carried by the majority necessary to pass a constitutional amendment, that is by two-thirds of the votes.

It is the duty of the Government of the Reich to assume ownership of the railways serving for general traffic, and to manage them on a uniform traffic basis. The Government of the Reich with the consent of the Reichsrat, issues orders for regulating the construction, management and working of the railways. With the consent of the Reichsrat the government may delegate these powers to a competent minister. The constitution goes into many details about the management of railways and waterways, and secures for the Reichsrat special authority in this matter.

The first outstanding feature of the German federal executive is its peculiar relation with the states, or *Länder*, as they are called. At the Weimar Assembly it was specifically asserted that the new constitution was to be a federal and not a unitary state. It is on this account that executive authority in the central and state spheres is exercised according to their respective constitutions. But the very first article of the constitution speaks of the sovereignty as emanating from the people as a whole, and this enunciation of the common source of sovereignty, coupled with the very extensive powers of legislation and supervision vested in the central government, has created in some minds the impression that the Republican German constitution is unitary. As a matter of fact, if it is remembered that the characteristic mark of a federation

**The  
President**

is not a duality of sovereignty,—indeed, there can be no such thing in any state,—but a duality of governmental organization, the German constitution presents a very typical example of federal structure. In the administration of subjects that are placed exclusively under the control of the states, the central government exercises very little authority. By far the most important field of administration, however, is common both to central and state governments. Herein the central legislature passes the necessary laws, and leaves their administration in the hands of the officials of the state governments, who are supervised in these respects by the central administration. Subjects that are exclusively central are also administered by state agency unless otherwise provided for. This practice opens out a number of opportunities for the central government to regulate state administration. But in such central subjects, that is, those which are to be administered by state governments on behalf of the Reich, the necessary regulations have to be approved by the Reichsrat, the ‘federal’ house. It is noteworthy that a general power of interfering for the purpose of restoration of order and security is vested in the President, which has many possibilities of being utilized for intervention. The influence of the prevailing unrest at the time when the constitution was framed is reflected in these clauses. It is also a remarkable feature of the organization of the federal executive in Germany that in the control and management of the railways, the constitution has specially laid down restrictions on the policy of railway authorities, and has vested special powers in these matters in the hands of the Reichsrat, the ‘federal’ house of the central legislature. This is doubtless due to the fact that the railways are a concern in which all the



states are vitally interested, and moreover, many of the railways before their transfer to the central authority were state properties.

It is difficult to understand the motive of the framers of the German constitution in creating a presidentship,

**His constitutional position**

which is popular in the sense of being directly elected, but which is parliamentary in the sense of being responsible to the legislature. The German President's title to office and authority is as strong as that of any office in a democracy. But the extent of his constitutional authority, apart from mere political influence, is very limited. Every act of the President requires to be countersigned by a responsible minister or the Chancellor, who hold their offices by the confidence of the Reichstag. It is irrelevant to a discussion of the essential position of the German President that Presidents Ebert and Hindenburg have by their own dominant, patriotic and constitutional personalities managed to keep a strong and continuous influence in regulating authority. The strength of a system is tried when a normal, not an extraordinary incumbent, comes to work it. The example of the United States is very significant in this respect. The personality and example of the first American President had led to the introduction of a number of provisions and practices in the constitutional working of that country which have proved highly inconvenient in later times. The function of the German President in the present constitution is to provide stability, and that the present occupant provides in a marvellously efficient fashion. It must also be admitted that in the Germany of today the elements of instability are so numerous that the stability represented by the position of the President is a great political and

constitutional asset. But his complete lack of constitutional power detracts from the President's usefulness. As the abnormal and the restless period of Germany comes to an end it will be realized that the head of the executive will be needed for many other purposes than mere stability. Particularly, in a federal constitution, where the matters coming up before government affect different states differently, and in a country where the number of parties is large, ordinary parliamentary executive is likely to be very weak. This can be constitutionally remedied by empowering the President under certain circumstances to act on his own initiative, secure in the support of the people, even against the legislature. If the people's constitutional choice is unable to save the country from a weak and vacillating parliamentary executive, an unauthorized dictatorship—as that of the Nazis—is bound to be attempted. If there were any chances of a bi-party system developing in Germany the evils of the situation would be minimised. As it is, the one man who represents the unity and popular support of the state is constitutionally the least powerful authority. One of the directions in which the German constitution may be expected to change is that of increasing the power of the President. Failing this, a less direct and elaborate system of electing the President, as in France, may be suitable. In any event the experiment of providing a parliamentary executive for a federal republic as that of Germany, must still be considered as being on trial, and only a born optimist can predict a sure success for the same.

The constitutional position of the ministers is equally undefined and unsatisfactory. The Chancellor, as noted above, is appointed by the President, who also appoints the ministers, only after they have been duly recom-

mended by the Chancellor. This constitutional provision is in keeping with parliamentary practice in all countries, but the legal dependence of **The Ministers** the ministers on the will of the Chancellor divides the allegiance of the ministers between the President—who technically appoints and dismisses them and often attends and presides at the meetings of the Cabinet,—the Chancellor who is their real leader and patron, and the Reichstag during whose pleasure the Chancellor and ministers hold office. The position is further complicated by the fact that it is not legally necessary that either the Chancellor or the ministers should be members of the legislature. Thus responsibility to the Reichstag is constitutionally provided for without at the same time constitutionally requiring that the ministers should be members of that body, as for instance is secured in the Australian constitution, not to mention the example of the ministers in the Indian provinces. Whether the German ministers are collectively responsible or are severally so is also a disputed point. The constitution recognizes a distinction between general policy and departmental administration, and makes the Chancellor responsible for the former and the individual ministers for the latter. It has even provided for ordinary legislation by prescribing the lists of subjects which must be discussed at a cabinet meeting and decided by a majority of votes, thus leaving the rest of the subjects by implication to the individual ministers and depriving the Chancellor, except in matters of policy, of the right of veto, which all prime ministers in a parliamentary government ought to possess in their cabinets. In practice, by stretching the connotation of the term 'policy', or by exercising his personal and official influence on his colleagues, the Chancellor may get out of the difficulty.

But this is assuredly a weakness in the German constitution. A distinction between matters of policy and matters of routine administration is entirely out of accord with the composition of a parliamentary executive, which ought to be composed of political leaders with a common programme. The attempt to graft the Swiss notion of administrative responsibility and collegiate executive on the framework of a parliamentary ministry is as unnatural as that to associate a directly elected President with a parliamentary executive in a federal form. The organization of the German federal executive appears to a student of comparative politics as being particularly grotesque, being based on an attempt to reconcile divergent principles of administration, the presidential and the parliamentary forms, and further on the insistence on introducing a parliamentary form in a federal constitution. It will be remembered that when the crisis of the Great War brought the German constitution into the melting-pot, the political reformers had set their heart on introducing parliamentary government in the Reich, and perhaps under the leadership of a strong and traditional monarchy the reform would have been a success. But a republic, a federation and a responsible government having been introduced by one and the same constitutional measure, an inevitable incompatibility has resulted. The Germans' gift for orderly progress and discipline, which has brought them out of many a grave situation, has helped to minimize these constitutional difficulties. That the constitution is imperfect in many respects must, however, be recognized and steps taken to simplify it. Contrary to the expectations of the framers of the constitution, the President has to take an active part in organizing a government from different sections of the various parties, whose number is a large one. With a

view to secure the support of a sufficiently influential coalition the number of ministerial posts has to be varied so as to make room for enough aspirants. The relatively passive attitude of the German ministries, who rarely take any bold initiative in support of a set programme of reform, and who almost invariably resign before an impending storm actually culminates in a vote of censure, is to be explained by the essentially weak and involved organization of the federal executive.

### CANADA

The British North America Act, 1867, which is the chief constitutional instrument of Canada, provides for the federal executive in the following way.

**Summary  
of consti-  
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provisions**

The executive authority of and over Canada is declared to be vested in the British Crown and is exercised by the royal representative in Canada for the time being.

There shall be a Council to aid and advise in the Government of Canada, to be styled the King's Privy Council in Canada; and persons who are to be members of that Council shall be from time to time chosen and summoned by the Governor-General and sworn in as Privy Counsellors, and members thereof may be from time to time removed by the Governor-General. All powers in relation to Canada as a whole, which formerly were exercised by any of the provincial authorities, are now declared to vest in the executive government of Canada. All powers vesting in the Governor-General-in-Council, are to be construed as referring to the Governor-General acting with the advice of the King's Privy Council for Canada. It is lawful for the Crown to authorize the Governor-General of Canada to appoint his deputies in the various

provinces and to regulate their functions from time to time, but such an appointment shall not affect the exercise by the Governor-General himself of any power, authority or function. The supreme command of the armed forces continues to be vested in the Crown. The seat of the Government of Canada until the Crown otherwise directs shall be at Ottawa.

The scope of Dominion administration in all departments is extensive over the whole field which is not specifically set apart for the provincial governments. The legislative powers of the provinces are enumerated and contain the following main topics: amendment of provincial constitutions excepting the office of the Lieutenant-Governor; direct taxation; borrowing on the credit of the province; provincial services; public lands and forests; prisons, hospitals and asylums; municipal institutions; shops and licenses; local works including railways, steamways, telegraphs, etc.; incorporation of companies with provincial objects; solemnization of marriage; property and civil rights in the province; administration of justice, and 'generally all matters of a merely local or private nature in the provinces'. Education also is a provincial subject, but certain fundamental rules such as those regarding rights of denominational schools, are made by the Dominion Government and have to be observed by provincial authorities. Agriculture and immigration are subjects in which the provincial governments act and legislate, but their action has legal validity only in so far as it does not contravene the action of the Dominion Government, which also has control over these departments. As all the residuary powers vest in the Dominion Government, a separate list of Dominion subjects is attached only as a descriptive and not an exclusive one. Public debt; regulation of trade and commerce;

taxation by any mode; posts; census and statistics; defence; dominion services; navigation, shipping and lighthouses; quarantine; fisheries; currency and banking including savings banks; weights and measures; negotiable instruments; bankruptcy; patents and copyright; Indians; naturalization; marriage and divorce; criminal law, excluding constitution of courts, but including criminal procedure; these are the more important of the central subjects.

As the Dominion executive is based avowedly on the British model of responsible parliamentary government there are few special features to be noted concerning the federal executive in Canada.

**British model** From the federal standpoint, however, it might be observed that the appointments of Lieutenant-Governors of the various provinces which are vested in the Dominion Government, and which are outside the scope of the constitution-amending competency of the provincial legislatures, create an accession of authority to the central government over the provincial which has shocked many constitutional purists. Some have even doubted the propriety of calling the Canadian constitution a federal one. In practice, the Dominion Government in making the appointment of a Lieutenant-Governor is as much guided by local opinion as His Majesty is in making the appointments of the Governor-General of Canada and the Governors of Australian states. In their capacities as the representatives of the King, also, there is little difference between the Governor-General, the Governors and the Lieutenant-Governors. As, however, a dual system of government is provided by the constitution to meet the separate needs of central and provincial administration, the objections to the federality of the Canadian constitution are unsound. That the

residuary powers remain with the Dominion Government is due, in the case of Ontario and Quebec, to the historical reason of these provinces having been under a common government before the introduction of federalism, and in the case of the other provinces to the need of uniformity, and strong central government. In certain subjects, such as agriculture and immigration, in which both the Dominion and central governments have concurrent jurisdiction, federal laws prevail over provincial ones; in certain other matters like education, which are provincial in entirety, some fundamental requirements, like the rights of denominational schools, are laid down by the central legislature, and the Dominion executive naturally interferes to secure effect for Dominion policy in these matters. The Dominion Government is vested, also for historical reasons, with the right of vetoing provincial legislation, thus increasing the centralizing bias of the constitution. In fact the Dominion Government has never been known to disallow a provincial Act except on grounds of gross unconstitutionality.

The nature of the federal executive is so closely British that it is no wonder that such evils as the spoils system, partisan executive, disharmony between executive and legislature are almost entirely lacking in Canada. In the Canadian constitution the experiment of having a responsible executive coupled with a federal form was tried for the first time in the history of federalism. Thanks to the close association with Britain and British ideas this form has till now proved a fair success. That the activity of the Dominion Government since its inception has been mostly in the field of material development in which all provinces have shared alike may also account for part of this success. So great was

**Dominant  
position  
of the  
central  
government**



the insistence of Sir James Macdonald that the Canadian constitution should be based on the British that a Canadian Privy Council of the British Crown was specially created to complete the analogy with the United Kingdom. It is curious that the Constitutional Act lays down that the powers of the Governor-General will be exercised with the advice of the ministers, but does not specify that these ministers must be members of the legislature or responsible to it. This is secured by a practice dating practically from the time of the inauguration of the federal constitution. Certain evil features associated with the working of the American government, such as the vitiating influence of moneyed interests, have latterly emerged in Canada.

#### AUSTRALIA

The executive power of the Commonwealth is vested in the British sovereign and is exercisable by the Governor-General as the Crown's representative, and extends to the execution and maintenance of the constitution and of the laws of the Commonwealth. The Commonwealth Act lays down that 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. The Governor-General may appoint officers to administer such departments of state as the Governor-General-in-Council may establish. Such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Federal Executive Council,

**Summary  
of consti-  
tutional  
provisions**

and shall be the Crown's ministers of state for the Commonwealth. After the first general election, no minister of state shall hold office for a longer period than three months unless he is or becomes a member of parliament. Until the Parliament otherwise provides, the ministers of state shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or in the absence of provision, as the Governor-General directs. There shall be payable to the Crown, out of the consolidated revenue fund of the Commonwealth, for the salaries of the ministers of state, an annual sum which, until the Parliament otherwise provides, shall not exceed twelve thousand pounds a year. The appointment and removal of all other officers of the executive government shall, until the Parliament otherwise provides, be vested in the Governor-General-in-Council, unless the appointment is delegated by the Governor-General-in-Council or by law to some other authority. The command of the armed forces is vested in the Governor-General. The following departments are transferred by states to the Commonwealth: posts, telegraphs and telephones; naval and military defence; lighthouses, lightships, etc.; quarantine; and customs.

The government of the Australian Commonwealth, like that of Canada is based on the British model, and is responsible parliamentary government in practice. But there are a few special features of the Australian executive which demand notice. There is no Privy Council specially created for Australia, and the executive is styled a plain 'Executive Council'. There is no specific provision as in the Canadian constitution that the authority of the Governor-General is to be exercised by and with the advice of ministers. But the law lays down that

**Special  
features**

ministers must, at the time of their appointment, be, or must within three months of their appointment manage to be, members of the legislature. As in the Canadian constitution, responsible government is not provided specifically by the constitution. But the Commonwealth Act makes the salary of the ministers dependent on the will of the legislature.

The practice of responsible government in Australia is, of course, the same as in Canada, both being under the direct and indirect influence of British example and tradition. But the close association of the Australian Labour Party with the Trade Union movement has introduced the influence of party caucus in Australian public life from which British public life is substantially immune. From the standpoint of unity and independence of administration this is not a very encouraging sign. The experience of many countries proves that the recognition by the Government of any allegiance, open or secret, narrower than that owed to the nation as a whole makes for partisan government, which leads to political unrest and eventually to social upheavals. There is a general dissatisfaction with the working of the executive government in Australia. Not only is there a general demand that the scope of federal action should be further widened, but the Labour Party aims at substituting elective for responsible ministries.

## CHAPTER VI

### FEDERAL LEGISLATURE

IN all modern constitutions the utmost importance is attached to the legislature. This is due to the evergrowing scope of legislative activity, and the conferment on the legislature of a number of functions concerning supervision and control over the executive. Thus the formulation of the will of the state and the guarantee of its efficient execution depend on the free and informed action of the legislature. The peculiar significance that attaches to the organization and functions of the legislature in a federation is due to the important position held by the states in its constitution. It is, indeed, a truism that in a federal constitution the people have a dual citizenship and that in their relation to the federal government the whole population must have a uniform status. A number of topics that attract the attention of the central legislature concern the collective well-being of the states so vitally, that it is felt to be what mere justice and efficiency demand, that a place should be found for the unity and equality of the states as also for the national citizenship of the people. The actual organizations of the federal legislature differ as to the ways by which this requirement is secured, as also the extent to which the principle underlying it is honoured. Federal legislatures also differ in their relations to the executive and the extent of their non-legislative functions. A comparison of all these particulars is calculated to throw much useful light on the working of federal

legislatures, and on their influence on the government of federal states.

### SWITZERLAND

The constitutional provisions bearing on the organization, functions and working of the Swiss legislature may be summarized as follows. -Subject to the rights reserved to the people and to the cantons the supreme power of the Confederation is exercised by the Federal Assembly, composed of two chambers, namely, the National Council and the Council of States. The National Council is composed of deputies elected by the Swiss people in the proportion of one member to each 22,000 of the population, fractions greater than 11,000 entitling a state to one more member. Each canton, and in the divided cantons each half canton, elects at least one deputy. Elections to the National Council are direct, and are conducted on the principle of proportional representation. Other details are settled by legislation. Every Swiss citizen who has completed the age of twenty years, and who is not excluded from the rights of active citizenship by the laws of the canton in which he is domiciled, has the right to take part in elections and pollings. Every lay citizen entitled to vote is also eligible for membership of the National Council. The National Council is elected at the end of every four years. Members of the Council of States, the other chamber in the legislature, of the Federal Council, or other officers appointed by that Council are ineligible to be members of the National Council. The National Council selects a chairman and a vice-chairman from amongst its members for each ordinary and extraordinary session. A member who has been chairman at one session cannot be

either chairman or vice-chairman in the next ordinary session. The same member cannot be vice-chairman in two consecutive sessions. In case of an equality of votes, the chairman has a casting vote; in elections he votes in the same way as other members. An allowance is paid to the members of the National Council. The Council of States is composed of forty-four deputies from the cantons. Each canton appoints two deputies and each half canton one deputy. Members of the National Council and of the Federal Council cannot be members of the Council of States. The arrangements for the election of chairman and vice-chairman are the same as in the National Council, with the exception that in the former, deputies from one and the same canton cannot be either chairmen or vice-chairmen for two consecutive sessions. The voting competence of the chairman of the States Council and the allowances paid to members are the same as in the case of the popular house.

The Assembly deliberates on all matters placed within the competence of the Confederation and not specifically assigned to any other federal authority.

**Powers of  
the Federal  
Assembly**

In particular the Assembly will provide for the election of federal authorities, namely the Federal Council, the Federal Tribunal, the Chancellor, and the Commander-in-Chief of the federal army; alliances and treaties with foreign states; agreements between cantons on an appeal from the Federal Council or from a canton; external safety, neutrality, peace and war; guarantee of cantonal constitutions and territory; internal order; amnesties; federal army; appeals from the decisions of the Federal Council in administrative disputes; and conflicts of jurisdiction. Both councils meet once a year in ordinary session on a day fixed by standing orders.

Extraordinary meetings are summoned by the Federal Council, or on the request of one-fourth of the members, or of five cantons. The attendance of an absolute majority of the total number of its members is necessary for the valid transaction of business in either council. Questions are decided by an absolute majority of those who take part in voting. The assent of both houses is necessary for the passing of federal laws and decrees. Federal laws are submitted for acceptance or rejection by the people if a demand be made by 30,000 active citizens or by eight cantons. Federal decrees which are of general effect and are not urgent are also required to be likewise submitted on demand. International treaties concluded for an indeterminate period or for more than fifteen years must also be submitted for acceptance or rejection by the people on demand of 30,000 active citizens or eight cantons. Federal legislation shall determine the forms and suspensory intervals to be observed in popular votings. Members of both councils vote without any binding instructions from their constituents. The two councils meet separately. For elections to federal offices, for exercising the right of pardon, and for deciding conflicts of jurisdiction, the two chambers meet in joint session under the presidency of the chairman of the National Council. Decisions at joint sessions are arrived at by a majority of members of both houses. Both the chambers and all their members have equal rights of initiating legislation and amendments. The cantons also may exercise by correspondence the right to suggest legislative changes. Meetings of the legislature are normally public. German, French and Italian are recognized by the constitution as official languages. The responsibility of federal officers for their conduct in office is regulated by federal legislation.

These fundamental provisions regarding the organization and working of the federal legislature have been supplemented and elaborated in many respects by federal legislation. It will be observed that the constitution does not fix the number of members of the National Council, but lays down a proportion between the total population of the federal territory and the membership in the popular house. Accordingly, with the steady increase in population, the number of members of the National Council has gone on increasing and now stands at 187, there being one representative in the lower chamber for every 22,000 of population. The minimum of one member for every canton is, however, guaranteed. The cantons have been laid out by federal law into more than fifty constituencies. Most of these are multiple constituencies and the system of electing representatives on the general ticket prevails, each member having as many choices as there are seats to be filled. By a constitutional amendment passed on a popular initiative in 1918, the method of proportional representation has been introduced. In elections an absolute majority of votes is insisted upon in the first ballot, but if no such majority is available then, a fresh ballot is ordered at which a mere plurality suffices. These practices would normally put a premium on a multiplicity of parties, but the relative simplicity of the Swiss public life has so far prevented the operation of these tendencies. With the growing complexity of social organization in Switzerland, particularly in the industrialized and urban parts, it remains to be seen whether these electoral methods are compatible with the necessary balance of parties in the Federal Assembly. Elections for the National Council are held in the whole country on one and the same day, usually on

**Constitu-  
tion of the  
legislature**



the last Sunday in October. The place of polling is very often a church. As membership is determined on the basis of population, such populous cantons as Berne and Zurich have a preponderance in the popular house. Berne, at present, has thirty-one members and Zurich twenty-eight, whereas Uri, Unterwalden and Schwyz have only one, two and three representatives respectively. Fourteen out of the twenty-two cantons have less than eight representatives. The proportion of the enfranchised part to the total population is only twenty-four per cent, as women are not entitled to vote. All voters except clergymen are eligible for election. In theory this disqualification applies both to Catholic and Protestant clergymen, but as the latter can resign orders when necessary and take them on again, the disqualification is really effective only in the case of Catholic clergymen. This conspicuous discrimination is, of course, due to the passions and jealousies raised at the time of the religious civil war and the defection of the Sonderbund.

To transact valid business, the attendance of a majority of members is necessary. The Council elects its own chairman and vice-chairman for each session, and the same person cannot be elected either chairman or vice-chairman for two consecutive sessions. In all, there are four sessions in a year, two long ones, in June and December lasting over a month at a time, and two shorter ones, in March and September. If the provision disallowing election of the same person to chairmanship or vice-chairmanship at two consecutive sessions were to be closely followed, a good deal of inconvenience and discontinuity would assuredly result. Hence by a legal fiction the four sessions held in

**Legislative  
procedure**

a year are taken to be one discontinuous 'session' and the chairman and vice-chairman continue in office for the whole period of twelve months. Even with this device, such a practice contrasts markedly with the British practice of electing the Speaker for the whole life of the Parliament and in fact continuing him in membership and office during good behaviour. Members of the National Council are paid a daily allowance of forty francs while attending the sessions of the Council, with an extra travelling allowance. If a member is found to absent himself from his place without adequate cause, the house has the authority to fine him by deductions from his allowance. There are no special powers conferred on the National Council as distinguished from the Council of States, except that money bills, which like all other bills are simultaneously presented in both houses, are first taken up for discussion in the popular house. At the commencement of each legislative session the chairmen of both the houses meet together and decide by agreement the course and division of legislative work between the two houses. Thus the legal provision of concurrent powers of the two chambers is actually followed.

The Council of States is the 'federal' house in the national legislative machinery. Historically there was no extensive precedent for a bicameral legislature in Switzerland. No cantonal legislature was bicameral and the Confederate Diet, except under the short-lived constitution of 1798, was always a unicameral body. At the time, however, when the federal constitution was framed in 1848, not only was the influence of the American example remarkable but it was apprehended that the equality and identity of cantonal existence would be lost in a single national

**Council  
of States**

chamber. There were, no doubt, the usual arguments in favour of a revising upper house. The Council of States is thus mainly based on the principles of equality between states and the integrity of the separate state-life. Each canton, large as well as small, sends two representatives to the Council; and what is more, every canton decides for itself the conditions under which its representatives in the federal legislative house will be chosen. Seven of the cantons leave their own legislatures free to select the cantonal representatives in the Council of States. In the rest of the cantons popular elections for the choice of the two members are held. The period for which these members are elected varies from canton to canton, being anything between one and four years. The members of the Council of States, unlike those of the National Council, are paid by their respective cantons, who also settle the scale of remuneration. Once a person is elected to the Council of States, he is free to vote as he likes and is not in any way under the instructions of his constituents. In one sense, it will be observed from this description, the Swiss Council of States is even more federal than the American Senate, as besides honouring the principle of equality of representation like the latter, the Swiss upper house leaves the selection of members to be regulated by the laws of the constituent states. Though the composition of the Swiss Council of States is thus distinctly more in keeping with the federal idea than that of the Senate in America, whose composition is now regulated by the federal constitution, the actual influence wielded by the former stands no comparison with the dominant position held by the latter. The powers of the Swiss upper house even legally are no more than concurrent with those of the popular house,

excepting the initial disposal of money bills which is reserved to the latter. In practice, however, the influence exercised on state policy and legislation by the Swiss Council of States is slight as compared with that of the other house. It is, indeed, true that the Swiss Council of States is not altogether a cipher in federal legislation as the Canadian or, to a lesser extent, the Australian Senates appear to be, but there is no doubt that the superior position held by the American Senate is peculiar among federal upper houses, if not among all the upper chambers of the world. As the basis of election to the Council of States is the same as that of the National Council in most of the states, and further as the more energetic, able and ambitious politicians tend to be drawn by the National Council, the position of the Council of States has become not a little anomalous. Particularly in view of the fact that the cantons are protected against constitutional changes by the compulsory referendum, which can be passed by a majority of states in addition to a national majority, this anomaly would appear to be all the greater. But the political equality claimed by constituent states under a federal constitution contrasts so markedly with the physical inequality of Swiss cantons, that it is not to be expected that the smaller states in Switzerland will ever agree to the abolition of the upper house, which serves as the emblem of inter-state equality, if as nothing more. The chairman and the vice-chairman of the Council of States, like those of the National Council, are required to be elected afresh for every session, and the same persons cannot be elected for two consecutive periods. In the case of the States Council, it is further laid down that the chairman or vice-chairman for two successive sessions must not be elected from one and the same canton. An absolute majority of members

constitutes a quorum, as in the case of the National Council.

There are some features of the working of the federal legislature taken as a whole, called the Federal Assembly, which deserve notice. The cantonal governments are empowered to suggest new legislative measures to the federal legislature by correspondence. This provision has been imitated to a certain extent by the German republican constitution under which a state may send a special representative to explain its own view on a matter pending before the Reichstag. The Federal Assembly is not a mere legislative body but a sovereign authority, controlling both the federal executive and the judiciary. The plenitude of the authority of the Assembly is, however, limited by the fact that a large and important field of legislative action is left free for the cantonal governments, and even in federal matters the people at large by taking recourse to a referendum and the initiative are actively exercising their check on the Federal Assembly. It must be noted that the theory of separation of powers which has been adopted by the American, and to a lesser extent by the present German constitution finds no place in the public law of Switzerland. It is provided by the constitution that the Federal Assembly acts collectively for the elections to federal offices, such as the Federal Council, the Federal Tribunal and the Commander-in-Chief of federal forces, for the granting of pardons, and for settling disputes of a constitutional character in which federal or cantonal authorities are involved. At such joint sessions the chairman of the National Council presides, and a majority of the joint house decides the questions coming before it. It is to be noted that no provision is made by the constitution for settling points

**The  
Federal  
Assembly**

of disagreement between the two houses. The facts that both houses are elected substantially on the same franchise—all except seven cantons have their representatives elected by popular vote—that the people can in most cases interfere by direct legislation, that the Council of States has not attempted to thwart the wishes of the popular house in important matters, and that the Swiss possess in a very ample measure habits of businesslike and smooth administration have combined to prevent a deadlock. In both the houses of the Swiss legislature a peculiar institution known as the bureau prevails. The bureau is composed of the chairman and vice-chairman of the house and four tellers. The duties of the bureau are firstly, to help in counting votes in divisions and generally in regulating the business of the house, and, what is of the utmost importance, to nominate members of committees which are not directly appointed by the house itself. Persons holding federal offices cannot become members of the federal legislature, but there is no provision preventing officers of cantonal governments from being members of the federal legislature. There are so very few material attractions in Swiss political life, the supply of candidates is so small and the Swiss habit of not withdrawing confidence once given is so strong that members of both houses are usually chosen as long as they offer themselves for election and do not make themselves utterly objectionable to their constituents.

The initiative and the referendum constitute two of the most characteristic institutions in Switzerland. Their

**Initiative  
and Re-  
ferendum**

prevalence also illustrates in a striking fashion that unity of sovereignty which exists under a divided governmental organization in a federal state. The people of Switzerland in their corporate capacity are

undoubtedly the custodians of supreme sovereignty in the land, as all constitutional changes are at their mercy, to propose, to dispense and to accept. If the cantonal constitutions exist in their present particular shapes it is because the sovereign people so wills. Direct popular control of legislation prospers in Switzerland as a native plant. In the three forest cantons even the normal method of legislation is to hold a popular assembly of all the citizens. In other states, where the area was too big to admit of the direct rule of the people as a normal method, all important measures legislative and otherwise had to be referred to the people's gathering and later on to their votes. In the organization of the Confederation, the first instance of the adoption of the practice of referring a proposal to the votes of the people was, curiously enough, supplied by Napoleon, who had a general popular vote taken on the constitution for Switzerland as framed in 1802. The constitution of 1848 was likewise referred to the people before its final adoption. The scope of the idea of popular sovereignty and direct democracy underlying the referendum very soon widened so as to extend to all legislative proposals and important actions of the representative government. Once the idea of direct popular participation in legislative responsibilities of a large state was familiarized, the proposal to empower the people to suggest legislative action and thus assert their authority in an affirmative way gained wide support. In the cantonal constitutions where the traditions of direct rule by the people were more recent, and where the feasibility of such proposals was less open to doubt, the initiative soon came to be associated with the referendum. At present almost all the cantons have incorporated both these accompaniments of direct democracy on a large scale in their constitutions. There are many

variations of detail. But for all Swiss cantons it can be said that their citizens can prevent their representatives from passing an act that the 'sovereign people' do not like, and can compel the legislators to put on the statute book a measure which the people desire, but which is either opposed by the legislature or is lightly treated by it. On purely theoretical grounds many objections are often raised against the institutions of the referendum and the initiative. It is feared that these methods will weaken the sense of responsibility of the members of the legislature. In truth, the Swiss legislature is all the more responsible and alert on account of the constantly impending danger of being corrected by the people. It is also said that the people may either prove too conservative and block progress, or they may be misled by designing politicians and radical leaders and thus render the contents of the statute book highly insecure. The experience of the Swiss cantons indicates that at least in their case the good sense of the people has got the better both of their alleged inertia and fickleness. In some cases the people have at first rejected proposals of which they could understand very little, but being convinced of the utility of such measures they have later on passed them of their own accord. The adoption of the electoral method of proportional representation by popular initiative after it had been defeated by referendum more than once is an instance in point. A healthy spirit of conservatism with an openness of mind to be rationally convinced of new reforms is a great asset to democratic communities, and where this exists the methods of direct popular legislation may be expected, under suitable modifications demanded by peculiarities of individual nations, to secure the highest ends of freedom, security and progress.



So far as the federal organization of the Swiss Confederation is concerned, all changes in the constitution require to be submitted for the vote of the people. Other legislative proposals, resolutions and decrees, excepting such as are in the class of private bills or are urgent, have likewise to be submitted to popular vote if thirty thousand voters or eight cantons demand a reference to the people. The cantonal governments do not usually act in concert and hence in fact this optional referendum comes into operation at the request of thirty thousand voters. From the day on which a law or decree is published, a period of three months is set apart during which it is open to those who oppose the measure to collect signatures from thirty thousand voters to a petition demanding a referendum to the people. Copies of all laws and decrees passed by the federal authorities are sent to the cantonal governments who have them published in the communes. It is here that the agitation for opposition commences in the form of collecting signatures. All signatures have got to be attested by the Mayor of the commune. On receipt of the necessary number of signatures the Federal Council within one month of receiving a fully signed petition arranges for a referendum. When a demand for a referendum comes from the cantons, it has to be communicated to the Federal Council by the Cantonal Councils concerned, though this action of the Cantonal Councils is always open to repudiation by the majority of the voters of that canton. The decision of a referendum is indicated by the attitude of the majority of voters in the federation at large, and the majority of cantons as separate voting units. There is no compulsory referendum for other than constitutional legislation in the

**Popular  
legislation  
in the  
federation**

federal government, nor is the initiative provided for in such matters. Fifty thousand voters can initiate a proposal for constitutional amendment. If this proposal is a specifically formulated amendment to the constitutional instrument, it is referred for the registration of the popular will like any other proposal. If, however, the proposal initiated by the people or the cantons is only a statement of the general principle of the desired amendment, the Federal Council first proceeds to refer to the people the previous question as to whether the introduction of such a principle in the constitution is called for. If the principle is approved by the people, the Federal Council and the Federal Assembly prepare an elaborate amendment embodying the principle already adopted by the nation, and submit the result to the people's vote. The restriction of the people's right of initiative in the federal constitution to constitutional matters only has had unexpected results. Whenever the people desire a particular legislative change, which they cannot get their legislature to adopt, their only course is to propose or initiate a constitutional change embodying the substance of their demand. The constitution thus gets loaded with many clauses that are in no sense fundamental to the constitution of the state. At present there is a movement in Switzerland for introducing the compulsory referendum for all classes of legislation and to adopt a popular initiative on matters other than constitutional. The Swiss people have so far utilized their democratic institutions in such a reassuring fashion that there can be little doubt that even this extension of direct legislation to cover the whole field of federal law will justify itself by its results. The growing complexity of Swiss life must serve, however, though not as a deterrent, as a warning. The political education of the Swiss in the art

of democratic government is the most advanced. The social problem of inequality has not as yet arisen to anything like the same menacing extent as is the case in other neighbouring countries. The people have shown themselves as thrifty of public money as of their own, and so long as these favourable conditions continue the referendum and the initiative may be expected to extend and yield encouraging results in the legislative organization of the federation, as they have already done in cantonal constitutions.

### THE UNITED STATES

All the legislative power of the federation shall be vested in a Congress, which shall consist of a Senate and a House of Representatives. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature. Representatives must be at least twenty-five years of age, and must have been citizens of the United States for at least seven years. They must also be residents of the state from which they are chosen. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors, for the presidentship and vice-presidentship of the Union, for Representatives, executive and judicial officers of a state, or for the members of the legislature thereof, is denied to any of the inhabitants of such a state, being twenty-one years of age and citizens of the United States,

**Summary  
of consti-  
tutional  
provisions**

or in any way abridged except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such citizens shall bear to the number of adult citizens. Persons engaging themselves in rebellion are disqualified as candidates for all legislative and other public offices. It is, however, open to the Congress by a majority of two-thirds of votes to remove this disability. When vacancies happen in the representation of any state, the executive authority thereof shall issue writs of election to fill such vacancies. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years, and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature. When vacancies in the Senate occur, the executive of the state concerned issues writs of election, but in the meanwhile temporary appointments may be made by the executive if empowered by the legislature to do so. Senators must be at least thirty years of age, and must have been citizens of the United States for at least nine years and residing in the state from which they are chosen. The Vice-President of the United States shall be the president of the Senate, but shall have no vote unless the Senators are equally divided. All other office-bearers of the Senate, including the substitute—*pro tempore*—president, are chosen by the Senate itself. The Senate shall have the sole power to try impeachments. When sitting for that purpose they shall be on oath or affirmation. When the President of the United States is tried the Chief Justice shall preside, and

no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not exceed removal from office, and disqualification to hold any office of honour, trust or profit under the United States; but the person convicted shall be liable to further action according to law.

The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators. The Congress shall assemble at least once in each year, and this meeting shall be held on the first Monday in December, unless the Congress has by law appointed another day. Each house shall be the judge of the elections, returns and qualifications of its members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members in such fashion and under such penalties as each house may provide. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and with the concurrence of two-thirds of votes expel a member. Each house shall keep a journal of its proceedings, and from time to time shall publish the same excepting such parts as in their judgment may require secrecy, and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal. Neither house during the session of the Congress, shall without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting. Members of both the houses shall receive a compensation for their services

to be ascertained by law and paid out of the treasury of the United States. They shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session and travel from and to the same; and for any speech or debate in either house they shall not be questioned in any other place. No person holding any office under the United States shall be a member of either house during his continuance in office, and no member of either house shall be appointed during his period of membership to any office which was created, or the emoluments attached to which were enhanced, during such period.

All bills for raising revenues shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills. Every bill which shall have passed the two houses, before it becomes law, shall be presented to the President of the United States. If he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it originated, who shall enter the objections at large on their journals, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent together with the objections, to the other house, by which it shall likewise be considered; and if approved by two-thirds of that house, it shall become law. In all such cases the votes of both houses shall be entered in the records. If any bill shall not be returned by the President within ten days, Sundays excepted, after it shall have been presented to him, the same shall be law in like manner as if he had signed it, unless the Congress by its adjournment prevent its return, in which case it shall not be a law. Every order, resolution or vote to which the concurrence of both houses may be necessary, except on

a question of adjournment, shall be presented to the President, and before the same shall take effect shall be approved by him, or being disapproved by him, shall be re-passed by two-thirds of the two houses.

As the American Union is the most impressive example of modern federalism and as its example has widely, almost universally, influenced the growth of federal institutions elsewhere, a study of its legislative organization has more than ordinary importance. As outlined in the constitutional provisions summarized above, the Congress which is the legislative body of the federal government is composed of the House of Representatives, which is the popular chamber, and the Senate, which is based on the federal principle of state equality. Unlike the Swiss and several other federations the franchise for the popular house in America is only indirectly and not always effectively determined by the federal constitution. It is provided that the franchise both for the Senate and the House will be that on which the most popular and numerous legislative chamber in the several states is based. It is further provided that no state can discriminate among its subjects in respect of voting rights to public bodies on the ground of race, religion, sex or previous condition of servitude. Within these limits, however, the states are free to regulate their franchise in any way they like. Thus in many of the states a complicated educational qualification is devised especially with the purpose of keeping out the negroes. This the federal government under the present constitution cannot prevent. Hence it must be observed that the franchise for both chambers in the federal legislature is left to be regulated by state constitutions, within general restrictions provided in the federal constitution. This is

**Composition  
of the two  
houses**

termed by some writers the congressional principle, that of basing the legislative structure of the union on the state organizations, and it is an interesting application of the federal idea. The total number of Representatives is at present 435, and this is distributed among the various states on the basis of their population. Thus the populous states of New York and Pennsylvania have as many as forty-three and thirty-six representatives respectively in the House, whereas there are no less than five states such as Delaware, which are represented in the lower federal house by only one member apiece. On the basis of the 1920 census the 435 members work out as one member for every 2,10,415 of population. Since 1912 no re-assortment of members on the population basis has been made, and hence inequality of representation as between rural and urban states has resulted. Besides these members elected by the constituent states, the organized federal territories are entitled to elect on the same basis as the states one delegate each to the House, who has all the rights and privileges of a member except the right to vote. The constitution requires candidates to be residents of the states from which they are chosen, but custom further requires the candidate for a seat in the House to be a resident of the district for which he seeks election. The 'congressional principle' in the formation of the House is emphasized by the fact that members, when they resign their places in the House, do so by tendering their resignation to the Governor of their state and not, as might be expected, to the Speaker of the House. Writs for election are also issued by the Governor of the state.

Unlike the Swiss system, described already, the internal management and control of the House, as also the jurisdiction over election disputes are entirely



vested in the respective houses without any constitutional restrictions. Both the chambers elect their own office-bearers, and regulate the standing orders and rules of procedure. A majority of members constitutes a quorum in both houses. Elections to the post of the Speaker take place on strictly party lines, and what is more distinctive of political conceptions in America, the Speaker continues to be an active adherent and leader of his party. This makes for limitations on the impartial conduct of his office which are tolerated as a normal feature by American public opinion. Till 1910 the Speaker had the privilege of appointing members to the numerous standing committees of the House and also of nominating their chairmen. Needless to say, this authority was as a rule utilized to further party interests. Nowadays these appointments are made by election in the whole house. This practice has led the party committees to put forward their own candidates on a general ticket. This involves much intriguing work, but the importance of the Speaker's post is thereby considerably reduced, though not altogether extinguished. Almost the whole work of legislation is done by committees, of which there are over sixty at present organized in the House. Every proposal before being discussed by the full House is referred to the appropriate standing committee which kills many bills by neglect, or by adverse report. It is true that this method of legislation by committees has something to recommend itself both on grounds of despatch and efficiency. Particularly in the American legislature, where there is no assured leadership offered as by a parliamentary executive as in Great Britain, or by a subordinate executive as in Switzerland, the committee system appears to be the only practicable

**Internal  
regulation**

means of securing despatch in legislative work. But there are very serious evils attendant on this practice. In the first place, as every piece of proposed legislation is discussed by a separate committee, no comprehensive, coherent or continuous legislative policy is possible. The committee method also opens out various prospects of intrigues and jobbery.

These evils are particularly marked in matters of finance. According to the constitution the right of initiating monetary bills vests exclusively in the House of Representatives. This, and the right to impeach, before the Senate, federal officers including the President are the only special rights conferred on the popular house. But the process by which this financial privilege is practically exercised is very involved. At the end of every financial year the Secretary of the Treasury informs the House of the requirements of the various departments for the coming year, and also of the state of the existing revenues. This statement is accompanied by a letter containing a general review of the finances and suggestions for reform or change. But all further action rests with the House. The House itself has one committee for Ways and Means which looks after taxation and other sources of revenue, and another committee for Appropriations which attends to expenditure. Even this last committee, however, has not all or even the major portion of expenditure under its observation. The various departmental committees such as those for the navy, war, commerce, etc., put forward proposals for appropriation to the corresponding state departments, and only such items of expenditure as are not covered by the action of any particular committee are left for the Appropriation committee to attend to. Thus not only is taxation dissociated from expenditure, but the various

heads of expenditure are themselves treated in a piecemeal fashion. If such a state of things makes for wasteful finance and inefficient control, the setting in of actual chaos is prevented by the close association between the respective departments of state and the members and chairmen of the standing committees of the House. Very often amounts sanctioned by the House are in excess of the needs; on the contrary there is nothing in a year of crisis to prevent the House from recklessly starving the state departments. Since the year 1921, when the Federal Budget and Accounts Act was passed by the Congress, a fully framed budget is submitted to the House by the President. The personal canvassing done by the heads of departments with the chairmen and members of the committees of the House and the Senate has since then been considerably reduced. The committees for Ways and Means and for Appropriations, however, still continue to be separate. And the disorganized and wasteful character of national finance has not altogether ceased. The unchecked and unregulated development of the tariff is made possible by this very lack of a unified policy in the activities of the legislature, which changes every alternate year and in which there are no means of securing leadership for a constructive and continuous purpose. This lack of leadership is also reflected in the position of the legislature taken as a whole, as it is content usually to act up to public opinion, rather than to lead it, as is frequently done by a parliamentary body.

Unlike the lower chambers in other legislatures and the Senate in the American Congress itself, the House of Representatives has only legislative functions to perform. The only two exceptions consist of the exclusive right to impeach federal officers including the President

before the Senate, and secondly the right to elect the President of the federation from the first three candidates for that post if none of them secures an absolute majority of votes from the presidential electors. Through its several committees, it is true, the House exercises powers of very close and sometimes vexatious scrutiny over the officers of the state, but as the House cannot control these officers its censorship and criticism is devoid of the necessary knowledge, responsibility and effect. Still these committees serve as the only link between the executive and the legislature, which would otherwise drift still further apart than they now do. As the number of members in the House is too large to allow of personal contact among members, the committees may be said to rule the fate of legislation in that chamber much more decisively than in the Senate, where the relatively close touch among members serves to supplement the deliberations of the committees on any issue.

The Senate is the most important body in the organization of the American federation, though not so much on account of its composition as on account of its composite functions and strong traditions. The adoption of the principle of equal state representation leads to the obvious result that a majority of the Senate does not necessarily stand for a majority of the nation. The Senatorial franchise like that of the House is only indirectly regulated by the federal constitution. For a long time after the inauguration of the union the system of election to the Senate was left to be regulated by the state laws. But now it is provided that Senators will be elected in every state by direct election at the hands of voters of

the most numerous assembly. If a vacancy occurs during the period of service of a sitting member, the state government with the sanction of the state legislature has the right to nominate a temporary member. The internal discipline and regulation of the Senate, like those of the House, are entirely left to the Senate itself, as also the right to decide its election disputes, which, needless to say, are almost always decided on party lines. As the House has the exclusive right to impeach, the Senate has the exclusive right to try impeachments. When sitting for this purpose the Senators are under oath or affirmation, and the public galleries are closed. The decision of the trial depends on a majority of two-thirds of the members present. Usually the Vice-President of the federation presides at these sessions as at the other sessions. But when the person impeached is the President of the United States himself, for obvious reasons of personal interest, the Vice-President is replaced by the Federal Chief Justice. In one respect the legislative power of the Senate is inferior to that of the House, namely in financial matters, which have to be initiated by the latter. But money bills like others can be, and in practice are, amended freely by the Senate. In executive matters, the Senate has such a pronounced influence as to remind an observer of the description of that body by Hamilton, who asserts that the executive authority of the State is divided between the President and the Senate. All treaties and foreign engagements require to be ratified by two-thirds of the Senate. Not only in the Wilson episode, but on a few prior occasions the Senate has repudiated arrangements arrived at by the executive head with foreign governments. Hence the executive has to keep in very close touch with the Senate's standing

committee on Foreign Affairs. This committee consists of seventeen members of whom seven belong to the minority party. The corresponding committee of the House, which has an indirect but by no means a negligible influence on foreign policy, consists of twenty-one members of whom nine belong to the minority party. So long as adherence to the Monroe Doctrine and the tradition of an exclusive foreign policy were maintained by the American government this weakness in the counsels of her foreign chancellory was of relatively small significance both to herself and to other nations. But now that America, in spite of her professions to the contrary, has come to wield an immense influence in the decision of international matters, a closer co-ordination between the President who has the initiative and operative part to play in foreign negotiations and the Senate whose sanction is necessary for all foreign agreements is highly essential. The Senate has also the right to appoint by two-thirds of votes persons to various federal posts as nominated by the President. The evils of this system have already been indicated, and the sooner these public service appointments are put outside the influence of political bodies the better for the purity and efficiency both of the service and the Senate. In these executive matters the position held by the Senate is so dominant that it is no wonder that all successful and able politicians end by becoming its members, thus raising its eminence as compared with the other body.

At present the Senate consists of ninety-six members, two each from the forty-eight states of the union. This equality of distribution of seats, which cannot be changed except by consent of the states affected, gives the Senate its distinguishing and federal character. This increase in

**Its dominant position**

its membership from the original number of twenty-six has no doubt tended to incapacitate it for efficiently attending to the executive functions created for it by the constitution. Contrary to the German practice, the Senators, like members of the Swiss federal house, vote in their individual capacity and are not bound to obey any instructions from their constituents. From the record of work that the American Senate has done till now, it may be seen that the Senators do not act to any appreciable extent as special representatives of state interests. In fact they are hardly to be distinguished in this respect from the popular chamber. As one-third of its members are renewed every alternate year, the Senate maintains a continuous and corporate character. This adds substantially to its political influence, as compared with the House the whole of which is renewed every two years. Considering the size and population of the country, the Senate is the smallest second chamber in the world. Its authority, however, is not only concurrent with that of the other house, barring the right of initiation of money bills, but, considering its executive functions and real influence, it is easily the predominant partner of the two, and the strongest second chamber in the world. As there is no parliamentary executive in America shouldering the main responsibility of putting forth legislative proposals, and these have to emanate from private members, the Senators are not at the same disadvantage as is felt by members of upper houses in parliamentary constitutions. If the voting by electors for the vice-presidentship does not result in one of the candidates securing an absolute majority of votes, the Senate proceeds to elect from the first two candidates on the poll the Vice-President for the period. It is needless to remark that owing to the

rigid organization of the voters into the two great parties this provision, and a similar one authorizing the House to elect the President, rarely come into operation.

The Congress meets together as provided by the constitution, and no one chamber can adjourn for more than **Dissocia-** three days or to another place without  
**tion from** the concurrence of the other. If the two  
**the** houses do not agree as to the date of  
**executive** adjournment the President is authorized to intervene to fix the date. The services of the members of both houses are paid for out of the federal treasury at the rate of 10,000 dollars per year excluding allowances. As the constitution of the American federation has been based on the theory of the separation of powers, the Congress, unlike the legislatures of most other countries, is not an omnipotent body, and with the exception of the executive powers vested in the Senate with a view to check the President, its powers are almost wholly legislative. This marked dissociation from the executive has been partly bridged over, as noted above, by the working of the committees. Whenever the President belongs to the party which is in a majority in either chamber, some unofficial collaboration between the executive and the legislature takes place. But there is another, and an even more doubtful method whereby at times an attempt has been made to span the gulf. As the legislature cannot control the executive by replacement or by interpellation, it attempts to do so by the more cumbrous and rigid method of legislation. Thus a large number of inconvenient restrictions come to be placed on the action of the executive, which do not make for efficient administration, which it is the design of the principle of separation to achieve. But as all these institutions have been in working order for



nearly a century and a half, appropriate methods have been devised to minimize the friction which undoubtedly results from the system of checks and balances. That some of these methods are not an unmixed good is revealed by the evils of the party system in the United States.

### GERMANY

The German constitution provides for the organization and powers of the federal legislature as follows.

**Summary  
of consti-  
tutional  
provisions**

The Reichstag is composed of the Deputies of the German people. The Deputies are the representatives of the whole people. They are subject to their conscience only and are not bound by any instructions. The Deputies are elected by the universal, equal, direct and secret suffrage of all men and women above the age of twenty, upon the principle of proportional representation. Elections must take place on a Sunday or a public holiday. Details are determined by the election law of the Reich. The Reichstag is elected for four years. New elections must take place not later than sixty days after the expiration of the period of the old Reichstag, and the new Reichstag must hold its meeting not later than thirty days from the date of its election. The Reichstag assembles annually on the first Wednesday in November at the seat of the Government of the Reich. The president of the Reichstag must summon it earlier if requested by at least one-third of its members or by the President of the Reich. The Reichstag determines the conclusion of the session and the day of reassembly. The President of the Reich may dissolve the Reichstag, but only once for any reason, and new

elections must take place not later than sixty days after the dissolution. The Reichstag elects all its office-bearers and settles its own rules of procedure. Between sessions and elective periods the Chairman and the Vice-Chairman continue to discharge the duties of their office. The Chairman exercises domestic and police authority within the Reichstag buildings. He is responsible for the administration of the house; regulates receipts and expenditure within the limits fixed by the budget of the Reich, and represents the Reich in all the legal business and legal proceedings connected with his administration. The Reichstag conducts its business in public. Upon the motion of fifty members, supported by a two-thirds majority, the public may be excluded. Accurate reports of deliberations of the public sessions of the Reichstag, of a state Diet, or of their committees are privileged.

A court of inquiry into elections is established in connexion with the Reichstag. It also decides the question as to whether a Deputy has forfeited his membership. The court consists of members of the Reichstag, chosen by it for the electoral period, and of members of the Administrative Court of the Reich, appointed by the President of the Reich, upon the motion of the presiding officer of that court. The court gives judgment on matters brought before it after public *viva voce* investigation by three members of the Reichstag and two judicial members. Apart from the investigations before this court, inquiries are conducted by an official of the Reich, appointed by the President of the Reich. Further procedure is determined by the court.

For a decision of the Reichstag, a simple majority of votes is required, where no other proportion of votes is required by the constitution. The rules of procedure may permit exceptions in the case of elections to be

undertaken by the Reichstag. The quorum is regulated by the rules of procedure. The Reichstag and its committees may require the attendance of the Chancellor and ministers of the Reich. These and officers appointed by them have access to the sittings of the Reichstag and its committees. The states are authorized to send to these sittings plenipotentiaries to explain the point of view of their governments in respect of the matters under discussion. At their request, government representatives must be heard during the debate, and the representatives of the Government of the Reich must be heard without regard to the order of the day. The Reichstag has the right to appoint committees of inquiry and must do so on the motion of one-fifth of its members. These committees examine in open session such evidence as may be considered necessary by the committee or by the movers of the motion for their appointment. The public may be excluded by a resolution of the committee supported by a two-thirds majority. The rules of business prescribe the procedure of the committee and determine the number of its members. The courts and administrative authorities are bound to comply with the request of such committees for the production of evidence, and official documents must be laid before them if desired. The regulations of criminal procedure are in principle applicable to the inquiry of the committee, but the privacy of correspondence and postal communications must be respected. The Reichstag appoints a Standing Committee on Foreign Affairs, whose sittings are not public, and which continues in office during the interval between sessions and between electoral periods. For these periods the Reichstag also appoints a Standing Committee for the Protection of the Rights of Representatives of the People as against

the Government of the Reich. These committees have the same rights as the committees of inquiry.

No judicial or administrative proceedings may be taken at any time against any member of the Reichstag or of any state Diet, on account of any vote that he has given, or of any utterances made in the exercise of his functions, nor may he be called to account in any other way outside the house. No member of the Reichstag or of a state Diet may be summoned for examination or arrested for any action involving criminal proceedings during the period of a session, without the consent of the house of which he is a member, unless the member be apprehended at the time of the act or at the latest in the course of the following day. The same consent is necessary for any other limitation on the personal liberty of a member that is likely to hinder him from attending to his duties. Any criminal or restrictive action against a member shall be suspended for the period of the session at the demand of the house to which the member belongs. Members of the Reichstag and state Diets are immune from legal liability to give evidence in respect of information oral or written communicated to them in their capacity as Deputies. Officials and military officers who are members of these legislative bodies do not require leave to attend the sessions, and when they offer themselves as candidates for these bodies they must be given leave to prepare for the election. Members of the Reichstag are entitled to travel free on all German railways, and to receive allowances as determined by a law of the Reich.

A Reichsrat is formed in order to represent the German states in the legislation and administration of the Reich. In the Reichsrat each state has at least one vote. According to present arrangements, in the larger

states one vote is assigned for each 700,000 of inhabitants. Any surplus of more than 350,000 entitles a state to have one more vote. No state may be represented by more than two-fifths of all the votes. The number of votes shall be readjusted by the Reichsrat after each general census of the population. In committees appointed by the Reichsrat no state shall have more than one vote. The states are represented in the Reichsrat by members of their governments. However, one half of the Prussian votes shall be assigned according to a state law, to representatives of Prussian provincial administrations. The states are entitled to send to the Reichsrat as many representatives as they have votes. The Government of the Reich must convene the Reichsrat on the demand of one-third of its members. The Reichsrat and its committees are presided over by a member of the Government of the Reich. The members of the latter are entitled, and if requested, are bound to take part in the deliberations of the Reichsrat and its committees. They must be heard on their demand at any time during the debate. The Government of the Reich and each member of the Reichsrat are entitled to lay proposals before the Reichsrat. Rules of procedure are decided by the Reichsrat itself. The plenary sessions are public but according to the rules of procedure the public may be excluded at discussions of certain subjects. A simple majority of votes is enough to decide questions brought before the house. The Reichsrat shall be kept informed by the ministries of the Reich of the progress of affairs in the Reich. Upon important subjects the committees of the Reichsrat concerned shall be called into consultation by the ministries of the Reich. The Government of the Reich issues the general

administrative instructions necessary for the execution of the laws of the Reich, 'unless otherwise provided by law. For this purpose the Government needs the assent of the Reichsrat when the execution of the laws of the Reich is the business of the authorities of the states.

Bills are introduced into the Reichstag either by the Government or by members. The laws of the Reich are passed by the Reichstag. The introduction of bills by Government, however, requires the consent of the Reichsrat. If the Government and the Reichsrat do not agree the former may still introduce the bill in the Reichstag but in doing so must also state the divergent view of the Reichsrat. If the Reichsrat adopts a bill which the Government does not approve of, the same must be introduced in the Reichstag and the Government must present its own view. Laws that have been adopted according to the provisions of the constitution must be published by the President within one month in the official journal of laws. Laws of the Reich come into force, unless otherwise provided therein, fourteen days from the day on which they are published in the journal. The promulgation of a law of the Reich shall be deferred for two months if one-third of the members of the Reichstag so demand, except in the case of such laws as are declared to be urgent by the Reichsrat and the Reichstag. A law so deferred shall be submitted to the vote of the people on demand of one-twentieth of the total number of voters. The President may of his own accord refer to the people a law that has been passed by the Reichstag and sent to him for promulgation within one month of his receipt of the same. If one-tenth of the total number of voters present a draft legislation to the Government it must be placed before the Reichstag

**Legislative  
Provisions**

with a statement of the Government's position on the same. If the draft is passed by the Reichstag it becomes law, otherwise it must be referred to the people for sanction. The budget and finance bills shall be referred to the people only at the instance of the President. The procedure in connexion with the popular appeal and initiative shall be determined by a law of the Reich.

The Reichsrat may enter an objection against a law passed by the Reichstag. This objection must be lodged with the Government of the Reich within two weeks after the final vote in the Reichstag, and must be supported by reasons presented at latest within a further two weeks. When an objection is entered the law shall be brought before the Reichstag for further consideration. Should the Reichstag and Reichsrat not arrive at an agreement, the President of the Reich may within three months order an appeal to the people upon the subject in dispute. Should the President not make use of this right, the law shall not come into operation. Should the Reichstag decide by a two-thirds majority against the objection of the Reichsrat, the President must within three months either promulgate the law in the form approved by the Reichstag or order an appeal to the people. A decision of the Reichstag can be annulled by the decision of the people only when a majority of those entitled to the franchise take part in the voting.

The constitution may be amended by legislation. But decisions of the Reichstag with regard to such amendments come into effect only if two-thirds of the total number of members be present and if at least two-thirds of those present have given their consent. Decisions of the Reichsrat in favour of amendments of the constitution also require a majority of two-thirds of the votes

that are cast. Where an amendment of the constitution is decided by an appeal to the people as the result of a popular initiative, the consent of the majority of voters is necessary. Should the Reichstag have decided upon the alteration of the constitution in spite of the objection of the Reichsrat, the President of the Reich shall not promulgate the law if the Reichsrat, within two weeks, demands an appeal to the people.

Special interest attaches to the constitutional provisions laid out as above for the organization of the federal legislature in Germany, and to the various other features of legislation regulated by ordinary statute. It has been pointed out that many writers find in the German constitution such a strong flavour of centralization that they refuse to call it a federal constitution. The fact that the ordinary legislature of the Reich, namely the President, Reichsrat and the Reichstag, are constitutionally empowered to change the legal rights of the constituent states has also appeared to many as an insuperable obstacle in the way of the acceptance of the German constitution as a federal one. It is on record<sup>1</sup> that those who framed the German constitution deliberately adopted the federal model in preference to the unitary, and that the various institutions that they set up were designed only to meet the requirements of the situation as the German statesmen viewed it. The constitutional omnipotence of the central legislature, therefore, must be considered as a deliberate action on the part of the sovereign German people, who organized their public institutions into two sets and placed the constitution-amending power in the group of central institutions, with such safeguards as the suspensive veto of

**Omnipotence  
of the  
federal  
legislature**

<sup>1</sup> Proceedings of the Constituent Assembly at Weimar, 1919.



the federal chamber, and the rights of referendum and initiative vested in the people at large (these will be discussed later in their appropriate places). It is only necessary to point out here that the federal legislature in Germany is empowered to change the constitution, including the position of the states *vis-à-vis* the central government, and that in doing so the framers of the constitution did not feel that they were violating the principle of federalism.

There are many other interesting, and some unique, features in the legislative organization of the Reich.

**Procedure  
in the  
Reichstag**

The members of the Reichstag vote as individuals and are not bound by any instructions from their constituents. Universal suffrage, proportional representation and secret ballot are provided by the constitution and no discretion of whatever sort is left in the matter to the states, as is done to some extent in Switzerland and the United States. The meetings of the Reichstag are convened by its own Chairman, normally on a day fixed by the house itself. But he has also to convene a meeting if the President of the Reich, or one-third of the members of the Reichstag request him to do so. The President of the Reich has also the right to dissolve the Reichstag, but he can do so only once on account of any specified issue. Rules of procedure and standing orders are framed by the Reichstag itself, and it also appoints all its office-bearers, including the Chairman. The Chairman has full control over the premises of the Reichstag and its finances. All office-bearers continue to act in the parliamentary recess and during the time when the old body has been dissolved and the new one is not yet formulated. In view of these normal powers of self-regulation conferred on the

Reichstag, it is surprising at the first sight that electoral disputes are placed outside the exclusive purview of that body. These disputes are referred to a special electoral commission composed of representatives of the Reichstag chosen by itself, and of the National Administrative Court appointed by the President of the Reich on the recommendation of the president of the court. The purpose of setting up this special court to try electoral disputes was to prevent these matters being decided on partisan grounds, as is too often done in the United States. Similar steps, it may be pointed out, to place the jurisdiction in election cases into non-partisan hands have been taken even in England, where the traditions of Parliamentary supremacy are exceptionally strong. In addition to the inquiry conducted by the Electoral Commission, an official of the Reich is deputed to investigate all electoral disputes, though his findings have no judicial or binding character.

The Chancellor and ministers are not members of the Reichstag but they have the right to attend and to take part in the activities both of the Reichstag and its committees, who in their turn may require the attendance and co-operation of the executive heads whenever they like.

Thus the gulf between the legislative and executive organization of the Reich is effectively bridged. The German respect for authority and businesslike methods is reflected in the provision of the law whereby Government representatives have the right to be heard at any stage of the debate in priority to all others. The constituent states are empowered to send their representatives to the Reichstag, to explain their view in any matter in which they may feel specially interested, and these representatives are heard in the debate like any

**The  
cabinet  
and the  
legislature**

other members. The Reichstag, like most continental and American legislatures, has a number of standing and other committees to whom much of the preliminary work of legislation and administrative supervision is left. Of these, two committees are of special importance. One is the Committee on Foreign Affairs, which naturally has much to do with the shaping of the course of the external relations of the Reich. The other one is, among major states, a unique body. It consists of twenty-eight members, and is set up to be available when the Reichstag is not sitting, for the purpose of preventing the Government from violating the rights of the people's representatives. A similar body, it will be remembered, is provided for in the constitution of Venezuela. Both these committees have extensive rights of calling for official information and co-operation. Over and above these committees the German constitution provides for the creation of special investigating committees to inquire into specific grievances. These can be appointed by the Reichstag on its own initiative, or on demand of one-fifth of its members. For all practical purposes these committees are courts of inquiry following the usual procedure of criminal trial and empowered to demand official evidence, except of the most confidential character. If worked with zeal, these provisions are calculated to harass the executive to an extraordinary extent.

The German Reichstag, in its present form, occupies an unparalleled position. Technically there is no bicameral legislature in Germany at all, as all laws of the Reich are declared to be made by the Reichstag, though the President, the Reichsrat, and the people have special rights reserved to them in the process. At any rate it cannot be doubted that, unlike the Reichstag under

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the Empire, which was a mere shadow-show by the side of the all-powerful Bundesrat, the present Reichstag is the principal custodian of popular sovereignty in Germany. Its present membership is 491 and it is distributed among the states on the basis of their population. The monthly salary of each member is 619 marks, and those members who have to attend a committee or similar work while the Reichstag is not in session receive an extra daily allowance. Each group of fifteen or more members is entitled to be recognized as a separate party, and has the privilege of being represented on the committees of the Reichstag set up from time to time. Much of the legislative work is done by informal inter-party and party meetings, and on many occasions the proceedings of the plenary session of the Reichstag are little removed from a put-up affair. Questions can be asked of the Government, but these have to be in writing and have to be signed by at least fifteen members. A discussion on the Government's reply to an interpellation takes place only on demand to that effect from fifty members. Even if a discussion takes place a vote can be moved only on demand by at least thirty members, while it is provided on the other hand that if any thirty members move for an adjournment of such a vote, that demand must be granted by the presiding officer. It will be perceived that these extraordinary precautions are taken to see that the confidence of the Reichstag in the Government is not lightly withdrawn, and a crisis precipitated when least desired by the country. The very troublesome experience of the unchecked use of interpellations for passing censure on the Government, made in the French chamber, has doubtless served as a warning to the framers of the German constitution. As the constitution has specifically provided for

the resignation of the ministry on a vote of non-confidence being passed against them in the Reichstag, some constitutional writers hold that it is not necessary for the German ministries to resign on being defeated on other matters, such as an important budget grant, or a government proposal. But the German ministries are sufficiently discreet not to taste the bitter cup, and they usually resign even before the Reichstag has been driven to pass a formal vote withdrawing confidence from the Chancellor and his ministers, or from any minister in particular. Partly owing to the multiplicity of parties and internal political disorder, but principally on account of the thanklessness of the task of seeing the country through the hated Reparations regime, German ministries have hitherto been very short-lived.

The Reichsrat can be described as the upper chamber in the legislature of the Reich only in a peculiar sense.

**The  
Reichsrat**

It is true that all legislative proposals, before they are introduced into the Reichstag, have to be submitted to the Reichsrat, but non-acceptance of the proposal by that body does not lead to an arrest of the progress of the proposal, which is presented to the Reichstag with the remarks of the Reichsrat on it. The members of the Reichsrat are the representatives of the governments of the constituent states, and its personnel changes as different parties come into power in the respective state parliaments. The states may send only a single member each, but when his vote is cast it counts for as many votes as are granted to the state on the basis of distribution. Each state it is true has at least one vote; but the larger states have now one additional vote each for a population of 700,000 or a surplus of more than half the quota. There is a maximum limitation to the effect

that no single state, howsoever populous it may be, can have more than two-fifths of the total membership to itself. Thus Prussia, whose population is thirty-eight millions, would be entitled to more than fifty seats, but it has to be content with twenty-six, which is just two-fifths of the total membership of the Reichsrat, namely sixty-six. The other states are represented as follows: Bavaria eleven, Saxony seven, Wurtemberg four, Baden three, and the rest fifteen. On the committees of the Reichsrat no state can have more than one vote. The change in the basis of representation in the Reichsrat, which was originally regulated by the population of the least populous state, was brought about as a result of the consolidation of seven small states in central Germany into one state known as Thuringia. Even now the boundaries between different states, and even between different provinces of Prussia, are dynastic and administrative in character. The task of finding reliable social and economic barriers between states still awaits accomplishment. So also the need of reducing the overwhelming influence of Prussia is recognized in the constitution. The real purpose underlying the provision requiring half the Prussian votes to be distributed among the provinces of that state is to facilitate the rise of these provinces, by a process of decentralization, to the rank of constituent states. Hence the provincial representatives are at present allowed to vote freely and are not bound by the attitude of the Prussian Government. Only a preliminary meeting of all the Prussian members takes place to ascertain the chances of arriving at a unanimous view on the items before the Reichsrat. Prussia can now influence the Reich Government only by indirect methods, such as negotiations with other states and representation in the personnel of the federal administration.

The role of the Reichsrat is not exclusively, or even predominantly, a legislative one. It is really a body designed to associate the states' governments in the legislation and administration of the Reich. Thus, over and above being consulted on legislative projects, it has the privilege of being informed from time to time of the progress of the Reich. The various standing committees are as a regular routine called into consultation by the respective ministries of the Reich, and though the advice tendered by these committees is not binding, they are a means of regulating the state activity in administration. The Government of the Reich calls together the meetings of the Reichsrat and its committees either on its own initiative or at the demand of one-third of its members. A member of the federal cabinet also presides at the plenary and committee meetings, but he has no right to vote. There are in all eleven standing committees with nine members in each. When a proposal already discussed by the Reichsrat is before the Reichstag, the former body sometimes has one of its members sent to the latter body as the special delegate of his state, and this representative undertakes to explain the Reichsrat's view on the matter under discussion. The significance of this provision is particularly noteworthy when the Government is averse to the proposal of the Reichsrat which, however, has to be placed before the Reichstag with the Government's views on it. The direct influence of the Reichsrat in legislation is feeble: it only possesses the right of being consulted on all legislative projects. In cases of disagreement between the two houses, if the President refers the matter to the referendum of the people, the upper house gets the credit for having

**Its  
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exercised a suspensive veto. If the President does not refer the contested bill to the people, the Reichstag can compel him either to do so or to accept the bill by passing the same again by a two-thirds majority. But the proper function of a second chamber to serve as a brake on hasty and ill-advised legislation is fairly well discharged by the Reichsrat, though indeed it cannot lay claim to any domineering position in this respect as for instance is enjoyed by the American Senate, or was exercised by the former Bundesrat.

The Reichsrat has many executive and judicial functions of importance to perform. As observed above, it is associated with the administration of the Reich through its committees. It also decides on the claims of foreign associations to sue in German courts. It decides likewise as to what securities are suitable for investment of minors' properties. It grants pensions to public servants before the expiry of their normal period of service. In matters of tariff, finance and monopolies several administrative duties are set apart for the Reichsrat. It can also suggest other administrative steps to the Government, whose servants are bound to co-operate with the Reichsrat in all possible ways. Several appointments to federal administrative courts and national councils are left with the Reichsrat, which is thus clothed with a not inconsiderable patronage. In a very extensive field of litigation and conflict the Reichsrat serves as the final court of appeal. Thus mortgages, citizenship, state and national tax laws and commercial laws are matters that fall within its competence. The special association of the Reichsrat with the administration—and not the legislature alone—of the Reich is evidenced by the fact that meetings of the

**Its executive  
and  
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Reichsrat are convened neither by a separate chairman as in the case of the Reichstag, nor by the President of the Reich, but by the Government of the Reich, which also presides at the meetings. As the unique feature of the American Senate lies in its actual enjoyment of much executive and legislative power that is left with the more numerous house in other states, the peculiarity of the German Reichsrat lies in its close association, as representative of state administrations, with the whole administration of the Reich. The actual influence of both these federal chambers has exceeded the expectations of their authors. The close association of the Reichsrat with the Reich Government is an indication of the federal, rather than the unitary, tendency in the German constitution.

As already suggested, in the federal constitution of Germany both the principles of direct legislation by the people, those of the referendum and the initiative, have been prominently though not exhaustively introduced. The President of the Reich of his own accord may refer any bill that he receives from the Reichstag to the vote of the people, within a month of receipt. One-third of the members of the Reichstag may move for the postponement of the promulgation of a bill by the President for a period of two months. Unless the bill is voted to be urgent by both houses, such a request for suspension has to be granted. If during this period one-twentieth part of the total number of voters demand a reference to the people the bill has to be so referred. Of their own initiative one-tenth of the total number of voters may propose any change in the laws, which is straightway incorporated in the statute book if the Reichstag agrees with it. In case the Reichstag is unable to accept the

**Direct  
legislation**

popular draft, the same has to be referred to the people for the signification of their desires. Any course or proposal that has been adopted by the Reichstag can be vetoed as the result of a referendum only if more than one half of the total number of voters take part in the voting. Finance bills can be referred to the people only by the decision of the President, but considering that the President is only a constitutional head, this provision may be said to place in the hands of the cabinet an instrument which no other federal executive possesses in so direct a manner. A bill passed by the Reichstag by an ordinary majority and rejected by the Reichsrat is declared to have lapsed if the President refuses to refer it to the people. If the decision of the Reichstag is arrived at by a two-thirds majority and then such a contingency ensues, the President has to refer the bill to the people, or adopt the bill and promulgate the same as the law of the land. The people's right of initiative extends to constitutional measures as well. But if such proposals are referred to the people for their vote, either because the Reichstag has negatived them, or because the President so wills, they can only become law if an absolute majority of voters cast their preference for it. If a constitutional amendment passed by the Reichstag is unacceptable to the Reichsrat, on demand within two weeks from the latter, the same has to be referred to the people. The proposal of the Reichstag by a two-thirds majority to remove the President, has also to be passed by referendum. It will be observed that the right of initiative of the people is accepted by the constitution in full for constitutional as for other matters. So also a proposal initiated by the people and acceptable to the Reichstag becomes law without the necessity of being referred to and accepted by the people. In both

these respects the provisions of the German constitution are in advance even of those of the Swiss constitution. But the referendum, which in the Swiss confederation is obligatory for constitutional amendments, is not so in Germany. In respect of the referendum on other than constitutional matters, the position in Germany is in essence the same as in the Swiss confederation.

The Reichsrat, the Reichstag and direct legislation, are institutions in Germany which are not without their parallel in other federations and states. But the organization known in Germany as the National Economic Council is truly distinctive. It may indeed be termed the

**National  
Economic  
Council** fourth, or if we include the President, the fifth legislative order. It will be remembered that before the present German constitution came into being the provisional government was carried on on behalf of the central council of workers. The influence of that regime, though attenuated owing to the defection of the extreme socialists, persisted in the minds of the constitution framers at Weimar. The constitution thus provides for the setting up of a hierarchy of employers' and workers' councils in different localities and districts with a national joint council at the top. In the first two stages, the functions of these councils were to be mostly administrative and supervisory, but the national council was to be empowered to co-operate in the legislation of the Reich on economic and social matters. As such bodies were not in existence in all parts when the constitution went into operation, a provisional economic council was formed, and for the same reason, namely absence of parallel councils of workers and employers in different regions, the provisional Council continues to function to the present day.

It might be mentioned at the very outset that the National Economic Council is not intended to restrict the liberty of the legislature but only to advise the Government and the Reichstag on important matters of economic legislation. The Council at present consists of 326 members who represent the various economic interests in the society according to the following scheme: Agriculture 68; General industry 68; Commerce, banking and insurance 44; Transport 34; Small business 30; Consumers 30; Civil service and professions 16; Nominated 24; Market industries and fisheries 6. In each group excepting the nominated the total quota is made up of representatives of employers, employees and neutral persons connected with that vocation. Thus the sixty-eight persons who represent industries are drawn as twenty-five from employers, twenty-five from employees and eighteen from neutrals. Though the main basis of representation to the Council is thus a vocational and economic one, still attempts are made as far as possible to secure adequate representation for all the regions. The role of the Council being to advise on economic and social matters, it has two standing committees, one each for the social and the economic sides of its responsibilities. Other committees are set up as and when necessary. The Council is empowered to initiate its own proposals and present them to the Government, but the latter is bound only to place them before the Reichstag, with such observations as it may feel necessary. When advice has been sought by the Government of its own accord, it is not legally necessary for it to place the Reichstag in possession of the same. All social and economic laws before being presented to the Reichstag are to be placed before the Economic Council for its advice. The normal method of doing

this is through a committee of the Council, and only such matters as the Government agrees to have placed before the whole body are presented to the plenary session of the Council. The members of committees may require all reasonable assistance and co-operation from the Government. The members of the Council can ask questions provided they are signed by at least ten persons but the Government is not bound to answer them. The Council is empowered to depute a member to explain its proposals to the Reichstag. The twenty-four members who are nominated for special reasons are appointed by the Government and the Reichsrat in equal proportion. The plenary sessions of the Council are open, but the committees meet *in camera*. Suggestions for the remodelling of this provisional constitution of the Council are at present under consideration. It is suggested, to begin with, that the number should be reduced to the more manageable figure of 126, and additional members should be appointed for specific inquiries and purposes. The basis of nominations of the representatives of various interests should be, it is felt, national and not regional, though important gaps of regional significance may be filled by nominations as at present. It is also contemplated that the Government should be required to seek the co-operation of the Council, not as an expert examining a cut-and-dried scheme prepared by the Government, but as an informed and valuable co-operator in the process of formulating the proposal. Whenever this course is followed, and the proposal that goes before the Reichstag is jointly prepared by the Council and the Cabinet, a formal reference to the former would be dispensed with. It will be clear from this description of the constitution and working of the National Economic Council in Germany, that the Council

is far from being the full-fledged industrial parliament which a certain type of socialist loves to idealize. But the Council represents the desire of the German people firstly to have the proposals of its government checked by the experts before being presented to the legislature, and secondly to view all legislative changes from the wider national, and not the narrower class view which is so often adopted in a representative democracy. Besides the socialism of the present day, the kamaeralism of medieval and the nationalism of modern Germany are clearly visible in the framing of this institution. It would be a safe prediction that this example will be widely copied wherever democracies are faced with complicated social and economic problems.

#### CANADA

The constitutional statute contains very detailed provisions concerning the formation and competence of the federal legislature. There shall be, it is laid down, one Parliament for Canada, consisting of the Crown, the Senate and the House of Commons. The privileges, immunities and powers held by the Canadian Parliament and its members shall, from time to time, be regulated by the Canadian legislature; but these privileges, etc. must not exceed those enjoyed by the British Parliament and its members at the time of the passing of the Act of 1864. There shall be at least one session of Parliament in twelve months. The Senate, by an amendment of the constitution effected in the year 1917, consists of 96 members representing the various provinces as follows: Ontario 24; Quebec 24; Nova

#### Summary of consti- tutional provisions

Scotia 10; New Brunswick 10; Prince Edward Island 4  
Manitoba 6; British Columbia 6; Alberta 6 and Saskatchewan 6. In Quebec the twenty-four Senators shall be appointed respectively from the twenty-four electoral divisions into which that province is divided. The qualifications of a Senator shall be as follows. He must be a natural born or naturalized citizen of at least thirty years of age. He must be possessed of landed property in the province or district for which he is appointed of the value of four thousand dollars, over and above all dues with which it may be encumbered. His real and personal property taken together shall also be of the same value over and above all dues he may owe to others. He shall be a resident of the area for which he is appointed. The Governor-General shall in the name of the Crown summon qualified persons from the various provinces and districts to serve as Senators. Eight additional members, in batches so as to represent the four principal divisions of Canada (namely Ontario, Quebec, the maritime provinces, and the western provinces), may be appointed. A Senator holds his appointment for life. He may, however, resign his place by communication in writing to the Governor-General. The place of a Senator shall be deemed to have become vacant if he fails to attend two consecutive sessions of Parliament, or if he declares allegiance to some other power, or if he is declared bankrupt, or he is convicted of treason, felony or some other infamous crime, or if he ceases to hold property or residence as required. The Senate decides all matters regarding qualifications and vacancies of Senators. The Governor-General appoints and removes the Speaker of the Senate, from among the Senators. The quorum of the Senate, until Parliament otherwise decides, shall be fifteen including the Speaker.

Questions arising in the Senate shall be decided by a majority of voices, and the Speaker shall in all cases have a vote, and when the voices are equal the decision shall be deemed to be negative.

The House of Commons consists of 245 members, of whom 28 are elected for Ontario, 65 for Quebec, 14 for Nova Scotia, 11 for New Brunswick, 17 for Manitoba, 14 for British Columbia, 4 for Prince Edward Island, 21 for Saskatchewan, 16 for Alberta, and 1 for Yukon Territory. The Governor-General in the name of the Crown summons the House of Commons.

A Senator is ineligible to be a member of the House of Commons. The division of the several provinces into electoral districts is laid down in detail by the Act. The electoral law for the House of Commons is formulated by the Parliament so as to establish universal suffrage. The House of Commons at its meeting immediately after the general election shall elect a Speaker from its own members. Twenty members including the Speaker constitute a quorum. Questions arising in the House of Commons shall be decided by a majority of voices other than that of the Speaker, and when the voices are equal, but not otherwise, the Speaker shall have a vote. The period of office of the house shall be five years and no more, subject to an earlier dissolution by the Governor-General. At each decennial census, and in such manner as Parliament may decide, the number of members allotted to the various provinces shall be readjusted, in such a way as to leave to Quebec, with its population for the time being, its sixty-five members. Fractions of population more than one-half of the quota figure are counted as a full quota. The number of members of the Commons may be from time to time increased by the Canadian Parliament, provided the proportionate



representation of the provinces prescribed by the Act is not thereby disturbed.

All money bills shall originate in the House of Commons. No money bill or proposal shall be passed by the Commons which has not been recommended to it in that session by message of the Governor-General. When a bill passed by the two houses is presented to the Governor-General he may in the name of the Crown assent to it or withhold his assent, or may reserve the bill for the signification of the Crown's pleasure. A bill assented to by the Governor-General shall so soon as possible be sent to the competent Secretary of State, and the Crown may within two years of receipt of the bill disallow the Act, the annulment coming into force on the day on which the Governor-General signifies the disallowance to the Parliament. Bills reserved for the signification of the Crown's will lapse if within two years of their being presented to the Governor-General the assent of the Crown has not been communicated to the Parliament. It is of some importance to notice here that the epoch-making Statute of Westminster, passed by the British Parliament after consultation with all the Dominions, specifically excludes the British North America Acts from its operation. For the Dominion Parliament and the legislature of Quebec both English and French shall be authorized languages. In the courts of the Dominion as also of Quebec both these languages may be used.

The legislative organization and parliamentary procedure in Canada are, as closely as possible, based on the British model. Still there are many interesting features that their working exhibits. The total number of seats in the Senate set apart for Quebec are distributed among

**The  
Senate**

an equal number of electoral—or rather nomination—districts in that province. This special treatment of one province is to be explained away by the spirit of localism prevalent in the French province. The qualifications of members of the Senate are uniformly laid down by the Constitutional Act. But unlike the members of any other federal upper chamber, the Senators in Canada are to be nominated by the Governor-General on behalf of the British Crown. In actual practice these nominations are made at the instance of the responsible ministers and hence are, in most cases, made on party grounds. The life-tenure is also a unique feature, and judging from the extreme lack of any useful function set apart for the Senate, must be attributed to the narrow desire to reproduce the British parliamentary atmosphere even to a fault. The life-tenure is limited by the provisions leading to unseating consequent on absence at two consecutive meetings, and losing the initial qualifications of property and residence required by the statute. An attempt was once made to utilize the provision to nominate eight more members, in batches of four each so as to represent the four main divisions of Canada, to put an end to a constitutional conflict between the two houses. Since the stout opposition offered by the British Government to a use of its authority for settling a domestic dispute, no further recourse to that power has ever been taken. The Speaker of the Senate is appointed and removed by the Governor-General, thus denying to that body an elementary right of self-regulation prized by all legislative bodies. The quorum required both for the Senate and the Commons is small, following the British practice, unlike the Swiss or the American which insists on a majority of members being present for a valid transaction of the nation's business. It is noteworthy that the

Speaker of the Canadian Senate, like that of the Australian, is denied a casting vote, an equality of votes leading to a negative result.

The details of the electoral law for the House of Commons are also laid down by federal law. The Parliament is summoned by the Governor-General on behalf of the Crown, thus disagreeing with the German practice by which the President of the Reichstag himself convenes the body. The only restriction on the Governor-General's discretion in summoning the Parliament is that it must meet at least once in a year. The Speaker of the House of Commons, unlike that of the Senate, is elected by the house, and has only a casting vote, which is denied to the other. Readjustment of members and increase in the total number are allowed to be effected by Dominion legislation provided the representation granted to Quebec is not reduced and the relative proportion among the provinces is maintained intact. The House of Commons has the exclusive privilege of initiating money bills. But following the British tradition the Senate has been, in practice, reduced to impotence in financial matters. So also money bills are proposed only on the message of the Governor-General, as in England on the motion of the King's Government. The Dominion Government can disallow provincial legislation. In practice this is done very rarely and only in cases of unconstitutionality or gross impropriety or injustice. The laws passed by the Dominion Parliament can be as usual either vetoed or accepted by the Governor-General. No referendum is provided. But the Crown can disallow an Act accepted by the Governor-General within two years of its receipt in the Colonial Office. The Governor-General can also refrain from either accepting or rejecting a bill passed

by the Parliament and he may reserve it for the signification of the royal pleasure thereon. If, within two years, the Crown does not signify its acceptance of the bill so reserved, it lapses. This method has been extensively utilized to allow an unpleasant bill to lapse without raising an immediate storm. As the action of the British Crown in this connexion is mainly guided by the advice of its representative in the Dominion, who is a constitutional ruler, this provision does not really involve any restriction on the legislative freedom of the Canadian Parliament. As three languages are authorized in Switzerland, two are adopted in Canada, as a concession to French susceptibilities. Members of Parliament are paid the substantial salary of four thousand dollars per session, with deductions on account of non-attendance. The Canadian Parliament is, among the major states, the only instance of a legislature engaging the services of a leader of the opposition as a paid servant, just in the same manner as those of the chief minister of the Crown. The leader of the opposition is paid in Canada the annual salary of seven thousand dollars. In the formation of the House of Commons the residential qualification is not provided for and hence a good deal of electioneering intrigue and malpractice is promoted. Fortunately the spoils-system and party manipulations so much in evidence in the great federation across the southern frontier are not very prominent in Canada. It cannot be asserted, however, that the Canadians, who have taken such great pains to transplant British institutions, have been entirely successful in transplanting the British traditions of public life as a devoted national service. The Canadian house has also adopted the system of standing committees so very prevalent in America and Germany, though there is not

the same constitutional need for them as exists in the two other countries, where the principle of separation of powers is followed in varying degrees. So far as the essence of self-rule and federal association is concerned, there can be no doubt that the Canadian model yields for Canada more successful results than the American model does even for America itself, quite apart from the many other federations that have too closely followed her example.

### AUSTRALIA

The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of the Crown, a Senate and a House of Representatives. The Governor-General, who represents the Crown, may appoint such times for holding the sessions of the Parliament as he thinks fit and may also, by proclamation or otherwise, prorogue the Parliament and may in like manner dissolve the House of Representatives. After a general election the Parliament shall be summoned to meet not later than thirty days after the return of the writs. There shall be at least one session of Parliament in every twelve months. The Senate shall be composed of members chosen directly by the people of each state, voting, until the Parliament otherwise decides, as one electorate. The state of Queensland, if the Parliament does not otherwise provide, is authorized to distribute its membership among its constituent electoral districts. The number of Senators from each state shall be six. This number may be increased by Parliament in the case of the original states provided the principle of equal representation is not violated. In respect of the other states the Parliament

**Summary  
of consti-  
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may, apparently, regulate membership on other principles and thus reduce their membership in the Senate even to less than six. The Senators are elected for six years. In senatorial elections electors shall vote only once. The method of electing Senators in all the states must be uniform, though local Parliaments may pass laws for the regulation of time, place and other details of the elections. The Senate proceeds with business irrespective of the failure of individual states to participate in the elections. The writs for a new election have to be issued by the Governors of the states within ten days of the dissolution of the Senate. Half the Senate is renewed every third year. If a seat in the Senate becomes vacant before the expiry of the normal term and before new elections take place, the state Parliament, or if it is not sitting, the state administration is competent to fill the vacancy temporarily by nomination. The qualifications for membership of the Senate are the same as those for the membership of the House of Representatives. The president of the Senate is chosen by its members from among its members. The president may be removed from office by the vote of the Senate, or the president may resign his post by writing to the Governor-General. A Senator also can resign his post by writing to that effect to the president or, if the president is absent from the Commonwealth, to the Governor-General. If a Senator fails to attend for two consecutive months meetings of the Senate without the permission of the Senate, his place will be taken as having fallen vacant. One-third of the members constitutes a quorum. Questions are determined by a majority of votes of the Senators. The president shall in all cases have a vote and when the votes are equal the result of the voting shall be in the negative.

The House of Representatives shall be composed of members directly chosen by the people, and the number of such members shall be as nearly as practicable twice the number of the Senators. The number of members shall be distributed among the various states on the basis of their population. And unless Parliament otherwise provides, the distribution shall be based on the following procedure. Half the quota shall count as a full unit. The minimum representation of each original state shall be five. If for elections to the most numerous house in the legislature of a state, persons belonging to any particular race are disqualified, their number shall be deducted from the total population of the state before arriving at the number of members to which the state is entitled. Subject to the provisions of the constitution, the Parliament may make laws for increasing or diminishing the number of the members of the House of Representatives. The normal term of office of the house is three years, subject to an earlier dissolution by the Governor-General. In the absence of any division of the state territories into electoral districts by the state Parliament, the state as a whole may be considered as one unit for election to the House of Representatives. Provided that no voter is allowed to vote twice at the elections and subject to legislation by Parliament, the electoral franchise for the house shall be the same as for the most numerous legislative body in each state. Within ten days of the dissolution of the House of Representatives writs for new elections shall be issued. Until Parliament otherwise provides, the qualifications of a member of the House of Representatives shall be as follows. He must be at least twenty-one years of age, and must have been a resident of the Commonwealth for at least three years. If he is not a natural

born subject of the Crown he must have been naturalized for at least three years in one of the member states of the Commonwealth. Before any business is transacted by a new house it proceeds to elect its own president from its members. The Speaker may be removed from office by the vote of the house, and may himself resign by writing to the Governor-General. A member may resign by writing to the Speaker, or in his absence to the Governor-General. If a member is absent for two consecutive months from a session of the house without the permission of the house, his seat shall be taken as having been vacated. Until Parliament otherwise decides, one-third of the members shall constitute a quorum. Questions shall be determined by a majority of votes other than that of the Speaker. The Speaker votes only when there is an equality of votes, and then he must vote.

No adult person who has or acquires a right to vote at elections for the more numerous house of the Parliament of a state shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either house of the Commonwealth Parliament. Members of both houses have to take an oath or affirmation of allegiance before entering upon their duties. A person who is a member of one house is incapable of being a member of the other house. A person who owes allegiance to a foreign power, or has been convicted of treason or any other offence punishable by imprisonment for one year or longer, or is an undischarged bankrupt, or holds an office under the Crown, or has an interest in a state contract shall be incapable of being chosen for membership of either house. A disqualified person sitting in the legislature is liable to pay damages at the rate of £100 per day of such



attendance to the person who sues him for unauthorized membership. Unless Parliament otherwise decides, disputes regarding elections shall be settled by the house concerned. An annual allowance shall be paid to members of both the houses. The privileges of the Australian Parliament shall be the same as those of the British Parliament at the passing of the Act unless the former otherwise decides. Standing orders are framed by the respective houses.

As the Australian constitution partakes with Canada of the joint heritage from Great Britain, a number of features of its legislative and other organization are the same as in Canada. But more interesting than these similarities are the differences between the two. The course of federal evolution in Australia being more akin to that of the United States than to that of Canada, its organization shows very impressive traces of American influence. In fact, many among those who framed the original Commonwealth of Australia Act were avowed admirers of American institutions. The Senate consists of equal representatives of the six constituent states; they are directly elected by universal suffrage at present, after a short-lived experiment of leaving the electoral law substantially in the hands of the states; the period of a Senator's service is six years, and membership is renewed in parts; temporary vacancies are filled by state governments; in all these matters there is a close parallel between the Australian and American practices. But underlying these similarities of form there are many essential distinctions. The Australian Senate has none of those executive functions and forceful personalities that have made the American Senate the most powerful second chamber in the world. The Senate in Australia like

**American  
influence**

that of Canada, which latter has at least the excuse of being composed of members who lack the popular sanction behind their voice, has been on the whole an unimpressive body. It must, however, be admitted that the Australian Senate by its power of forcing a dissolution in case of continued disagreement exercises considerable indirect influence. Unlike the Speaker of the Canadian Senate that of the Australian Senate is appointed and dismissed by the Senate itself, but like his Canadian counterpart he has no casting vote. In both the houses of the Australian legislature a substantial fraction of the total membership, namely one-third, is required as a quorum, thus departing from the British and approaching the American model. Cases of disagreement between the two houses regarding ordinary legislation are not provided for in Canada, the United States and Switzerland. In Australia for meeting a situation of prolonged conflict a simultaneous dissolution is introduced. As both the houses are elected by the same set of voters, and as voting at elections for both is now compulsory by law, it is expected that they will now agree with each other. If disagreement still persists a joint session is provided for. The system of small electoral districts is employed in the case of the lower house, and that of the general ticket system for the Senate. Hence the upper house tends to be packed with the members of one party only, and that, the less conservative. The Speakers of both houses are elected on party grounds, and continue to act as party leaders, differing herein from the British and agreeing with the American practice.

The constitution provides that the number of members of the lower house will be as near as possible double the number of members of the Senate, which is at present

thirty-six. The members of the house actually number seventy-six, elected like the Senators on the basis of direct universal suffrage. The minimum that each state has of the membership of the house must be five, and no state can be deprived of its proportionate membership in either house without the consent of the majority of voters in that state. The federal territory is represented by one non-voting member in the house. The salary of every member of both the houses is £1,000 per year. The constitution does not provide any powers of veto to the executive. Hence the legislative freedom of the Australian Parliament is much more pronounced than that of Canada, which country, however, leaves many more subjects to be dealt with by its Parliament. To prevent the lower house from tacking on ordinary clauses to money bills it is provided that all such clauses of money bills as are not strictly relevant to the purpose of the Act are null and void. To prevent the rush through of all kinds of taxation proposals in an omnibus finance bill it is provided that except in the case of customs duties and excise, a taxation bill shall deal with one object only. This system also precludes the possibility of an all-round financial deadlock between the two houses. Partly owing to the influence of the caucus and partly to the lack of efficient material to run responsible government on a large scale and in a federal constitution, the course of events in the central Australian legislature has been anything but smooth. In particular the limited powers of the Commonwealth Government in economic and financial matters have caused much discontent. The service of the foreign loans of Australia will not be satisfactorily discharged, if the federal government is not authorized to regulate the financial and legislative policies

of states much more confidently than at present. So also the duties of the federal government in the matter of labour disputes cannot be properly executed so long as the competence of the federal legislature in the industrial sphere is severely limited.

# CHAPTER VII

## FEDERAL JUDICIARY

IN all forms of government the organization of the judiciary holds a very important place. An independent and capable judiciary is essential for securing to the citizens the rights conferred upon them by the state. From this standpoint the relation between the judiciary and the executive is always a very interesting study in all constitutions. In countries where the structure of government is based on a rigid constitutional instrument and where in particular the principle of separation of powers raises the judiciary to the level of a political power co-ordinate with the executive and the legislature, their mutual relations and the competency of the judiciary assume great, if not crucial, significance. This importance of judicial organization is further enhanced where the constitution happens to be federal, as then it is not only the rights of individuals and of branches of government, but of semi-independent 'states' that require to be interpreted and protected. The organization of the judiciary in a federal state is thus to be studied both from the federal and the wider political standpoint. The method of appointment, promotion, transfer and dismissal of judges has a bearing on their independence and capacity which must not be ignored. Their legal competence in respect of constitutional disputes is peculiarly significant in a federal democracy, as the assurance of an independent field of governmental activity by the constituent states depends

Special  
significance  
of the  
judiciary  
in a  
federation

on the ability of the courts to restrain the two sets of executive and legislative organization from transgressing the field appointed for them by the constitution. The courts, howsoever powerful, cannot and must not prevent a change in the constitution altering the limits of action of the federal and state governments. But the constitution being what it is, the courts ought to be able to see that it is honoured. Thus the independence and competence of the judiciary is a necessary counterpart of a well-ordered federal form of government. In the following sketch of the comparative organization of the judiciary in the five principal federations no attempt will be made to discuss the details from the standpoint of law or procedure. It is intended only to indicate the nature and the extent of the role played by the judiciary in the federal organizations of the respective states.

### SWITZERLAND

A Federal Tribunal is established for the administration of justice in federal matters. In penal cases trial is by jury. Judges of the Federal Tribunal and their substitutes are appointed by the Federal Assembly, who shall have regard to the representation of the three national languages, French, German and Italian. The organization of the court, its divisions, number of judges and substitutes, their term of office and emoluments, are determined by law. Any citizen eligible for the National Council may be appointed to the Federal Tribunal, but members of the Federal Council or of the Federal Assembly, or officials appointed by them, cannot, at the same time, be members of the Federal Tribunal. Judges of the federal court may not, during their period

**Summary  
of constitu-  
tional  
provisions**

of service, occupy any other position either in the service of the Confederation or in that of a canton, nor follow any other calling or profession. The organization and staffing of the establishment of the Tribunal is in its own hands. The Tribunal shall have jurisdiction in civil cases, (1) between the Confederation and the cantons; (2) between the Confederation on the one hand, and corporations and individuals on the other, when the latter are plaintiffs, and the matter in dispute reaches the degree of importance to be prescribed by federal legislation, (3) between cantons; (4) between cantons on the one hand and corporations and individuals on the other, when either party so demands and the matter in dispute reaches the degree of importance to be prescribed by federal legislation. At present the limit has been fixed at 3,000 francs. The Federal Tribunal has jurisdiction in regard to the loss of nationality, and disputes between cantons concerning the right of the citizenship of a commune. The federal court is bound to judge other cases when the parties lodge security and the matter in dispute is of the degree of importance to be prescribed by federal legislation. The penal jurisdiction of the Tribunal, to be exercised with the help of a jury, extends to (1) cases of high treason against the Confederation, and of revolt and violence against the federal authorities; (2) crimes and offences against the law of nations; (3) crimes and political offences which are the cause of, or are consequent upon, disorders necessitating the intervention of the federal army; (4) charges against officials appointed by a federal authority when brought before the Tribunal by that authority.

The Federal Tribunal has also jurisdiction in regard to (1) conflicts of jurisdiction between federal authorities on the one hand and cantonal authorities on the other;

(2) disputes between cantons in matters of public law; (3) complaints of the violation of constitutional rights of citizens and complaints by individuals of violation of concordats and treaties. Administrative disputes are excluded from its jurisdiction, subject to the provisions of federal legislation. The law to be administered is the federal law and treaties ratified by the Federal Assembly. Other matters, such as commercial law, may also be placed under the Tribunal's jurisdiction, by federal legislation. By a referendum of October 25, 1914, the following provision was adopted concerning the jurisdiction of the Federal Administrative Court in matters of administrative justice. Matters of administrative disputes and discipline referred to it specifically by the Federal Assembly were to be tried by such an Administrative Court when established. Other matters also may be left to the Administrative Court by the Federal Assembly, with whose sanction the cantonal governments may also leave their administrative cases to the jurisdiction of that court. The remaining details connected with organization and procedure are to be regulated by law. As no such law has, as yet, been passed, these provisions regarding the establishment of a Federal Administrative Court have not come into operation, the Federal Council and the Assembly continuing to exercise this jurisdiction. Extraordinary courts cannot be set up, and the ecclesiastical courts have been abolished. Suits for personal claims against a solvent debtor domiciled in Switzerland must be brought before a judge of his place of domicile; and the property of such a person may not be seized or sequestered outside the canton in which he is domiciled in satisfaction of personal claims. Imprisonment for debt is abolished. Every canton is bound to accord to citizens of the other confederated states, the same



treatment as to its own citizens in regard to legislation and judicial proceedings. Final civil judgments delivered in any canton may be executed throughout Switzerland. Political offences must not be punished with sentences of death. Corporal punishment is forbidden. Extradition for political and press offences cannot be made compulsory.

The outline of judicial organization in Switzerland created by constitutional provisions as outlined above has **The** been supplemented by federal legislation in **Federal** many respects. The Federal Tribunal, **Tribunal** which is the only federal court in Switzerland at present, consists of twenty-four judges and nine substitute judges elected for six years by the Federal Assembly. On the whole these elections have been satisfactory, and thanks to the Swiss practice of re-electing their public officials the tenure is in practice a life-tenure. The president and the vice-president of the Tribunal are elected by the Federal Assembly for two years, re-election in both respects being disallowed. The payment of judges, as that of other officers in Switzerland, is relatively low, being 27,000 francs per annum for the president, and 25,000 francs for other judges. According to the constitution as many substitute judges as the number of judges can be elected, but in practice only nine are so chosen. These substitute judges get paid by the day when they are actually on duty. The court is located at Lausanne, in the French canton of Vaud, as a compensation to the French for the importance granted to Berne, a German canton, in the matter of the political capital of the federation, and to Zurich as a seat of the Polytechnic. The Federal Court was originally organized for trying cases under the public law of the Confederation, but its jurisdiction has gradually extended to

all civil litigation. Law, both civil and criminal, including most of the procedure, is now a central subject in Switzerland, and hence the extent of this appellate jurisdiction is considerable. But it must be remembered that in Switzerland all original jurisdiction in civil and criminal cases is left to the cantonal courts, over whom the federal courts and authorities have little control. In the details of procedure some differences are noticeable between canton and canton. The Federal Court has no independent staff to get its judgments executed as is done in the United States. It has to rely on the Federal Council, the chief executive authority in the federation, for this purpose. But as this council also has no subordinate organization of its own it has to trust to the dutifulness of the cantonal councils to give effect to the decisions of the Federal Tribunal. Such a state of things no doubt weakens the position of the Tribunal, but in practice there has been substantial co-operation between the various authorities. The judgments not only of the Federal Tribunal, but of all courts in a canton are respected by the other cantons and are dutifully executed.

In two important respects the position of the Swiss federal judiciary is particularly weak. It can, in specific cases coming before it, pass judgment on the constitutional validity of cantonal laws, either on the basis of the cantonal or federal constitution. But laws passed by the Federal Assembly cannot be challenged before the Federal Tribunal. In other words, like the British Parliament, and unlike the American Congress, the laws of the Federal Assembly passed by usual procedure have to be accepted by the judiciary, whether their subject-matter is in accordance with constitutional

**Its constitutional and administrative jurisdiction**

provisions or otherwise, desirable or undesirable. In fact, from this standpoint it cannot be said that in the Swiss federation any strict division exists between public law and private law. The fact that any grave unconstitutionality on the part of the Federal Assembly can be quickly set right by direct popular intervention, reduces the significance of this lack of constitutional jurisdiction of the Federal Tribunal. Another respect in which the Swiss judiciary is at a disadvantage as compared with the American Supreme Court is the question of its own competence in any case, which in Switzerland is left to be settled by the Federal Assembly, whereas in America it is settled by the Supreme Court itself. A large part of public law, known as administrative law, consisting of departmental regulations of a semi-judicial character, is left to be administered by the Federal Council, from which appeal lies to the Federal Assembly, and only in a few cases to the Tribunal. In other continental countries there are separate administrative courts. These are not as yet created in Switzerland, though allowed by the constitutional amendment of the year 1914, and thus a very important and extensive field of jurisdiction is left out of the reach of the federal judiciary. It is, however, a noteworthy feature of the Swiss federal court that it hears appeals from state courts in a large number of civil cases, above the value of three thousand francs. In such matters of public law concerning the cantons and the Confederation as come before the Tribunal, it has to confine itself to the finding of the rights, leaving the award of damages to other authorities, legislative and executive.

For the trial of criminal cases the court sits in five assize circuits at stated periods. It is divided also into separate chambers for separate kinds of work, namely,

the Chamber of Accusation, Criminal Chamber, Federal Penal Court, and Court of Cassation. In assize trials jurors are elected by the people and are paid a small stipend per day of attendance. In Great Britain, the United States and other countries under the influence of British jurisprudence, there is, or at least till recently there was, no such thing as administrative law, and officials of government can be sued in the same manner and before the same courts as private individuals. On the European continent, and notably in France, there is an elaborate and parallel organization of administrative courts which has cognizance of matters where the official conduct of government departments is the subject-matter of dispute. In Switzerland a certain number of administrative matters such as, calling out of the cantonal militia, public school system of the cantons, freedom of trade, occupation and settlement, consumption taxes and import duties, freedom of belief and worship, validity of cantonal elections and votes, rights arising out of commercial contracts with foreign powers, patents, exemption from military service, etc., are taken out of the control of the Federal Tribunal and are left to be decided by the Federal Council. Presumably in other matters not specifically removed from the jurisdiction of the Federal Tribunal that court can still act as an administrative court. When effect is given to the constitutional amendment of 1914 and a separate system of administrative courts is established, this confused state of jurisdiction will end. It is very doubtful, however, whether the Swiss people will sacrifice convenience to academic rigour. The complete lack of acceptance of the principle of separation of powers must be remembered when instituting comparisons

between Switzerland and other countries, and particularly America.

### THE UNITED STATES

Article III of the constitution of the United States deals with the organization and powers of the federal judiciary. It lays down that the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges both of the Supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office. The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between the citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens and subjects. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all other cases mentioned above the court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make. The trial of all crimes, except in cases of impeachment,

Summary  
of consti-  
tutional  
provisions

shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed, but when not committed in any state the trial shall be at such place or places as the Congress may by law have directed. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attained.

Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof. A person charged in any state with treason, felony or any other crime, who shall flee from justice, and be found in another state, shall on demand by executive authority of the state from which he has fled, be delivered up to be removed to the state having jurisdiction of his crime. No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger. Nor shall any person be subject to be twice put in jeopardy of life and limb for the same offence. Nor shall anyone be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation. In all criminal

prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, and to be informed of the nature and cause of accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence. In suits at common law where the value in controversy shall exceed twenty dollars the right of trial by jury shall be preserved and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law. Excessive bail shall not be required, nor excessive fines imposed, no cruel and unusual punishments inflicted. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another state or by citizens or subjects of any foreign state.

The judges of the federal courts are appointed for life by the President with the concurrence of the Senate. As the tenure is secure and long, party interests do not so decisively affect the judicial appointments as they do the other appointments in the United States.

Particularly in the higher ranks of the federal judiciary a non-partisan tradition is maintained, if not in appointment at least in its functioning. The salaries paid to the judges are not indeed very high—they fall short of the earnings of the more successful lawyers. But the judges are decently paid, and the dignity that attaches to the service, and the security and distinction, have been adequate on the whole to secure the services of competent and impartial persons. The position in most of the

**The  
Supreme  
Court**

constituent states is in this respect far from satisfactory. Judges are elected by the voters for only a specific term. Thus good men are kept out and the monied interests and the party bosses combine to secure the election of pliable rather than able judges. The administration of civil justice and far more so of criminal justice is most unreliable in many of the states. The federal judges on the other hand are so secure in their service that they can be removed only on impeachment. If they resign after they have attained the age of seventy, they are given a pension equal to their salary, if they have served for a period of ten years or over. The system of recall, that is, the authority vested in the voters by a majority to unseat a judge during his period on account of unsatisfactory service, or to reverse his decisions as contrary to the judgment and wishes of the people, reduces the justice of the court room to that of the verdict of a person playing to the mob for his own safety. Against such a contrast of judicial organization in the states, and the executive and legislative organization, honeycombed and vitiated by party spoils, described in the last two chapters, the organization and functioning of the American federal judiciary appear to great advantage, and deserve the praises showered upon them both by American and foreign writers.

The federal judiciary is organized in three stages for the purpose of administering the normal federal law.

**District  
and circuit  
courts**

The district courts, of which there are at present ninety-four, are the lowest organizations, before which all civil and criminal suits under federal law come for original trial. Some cases such as those in which foreign ambassadors, or states of the Union are parties, and cases arising under treaties or other special laws, are reserved



for the original jurisdiction of the Supreme Court. The states are formed into federal judicial districts. No state can be associated with any other in a district, but one state if big enough, or offering vast business, may be split up into two or more districts. The districts are grouped into ten circuits mostly for appellate work. The circuit courts are composed of district and circuit judges. One member of the Supreme Court is technically detailed to preside at these circuit assizes, but in practice he very rarely attends the business in the circuit. The Supreme Court consists of one Chief Justice and eight associate justices. On occasions, the district courts appoint commissioners, who have the power of examining magistrates, but cannot finally adjudge or determine, except in the territory of Alaska, where they have jurisdiction equivalent to that of the Justices of the Peace and probate courts of the counties and the states. Cases from the district courts are taken in appeal to the circuit courts, though in some special cases or in cases of special magnitude direct appeals may be preferred to the Supreme Court. In the territories of Porto Rico, Alaska and Hawaii, there is the same dual organization of courts, federal and territorial. In the federal district of Columbia there is only one type of court. These courts are organized by statute and not by the constitution and hence the conditions of service of the judges who sit in them are different from those of the other federal judges. Appeals from the courts in the federal district, however, lie to the Supreme Court.

The Supreme Court also serves in some specified cases as a final court of appeal from other special courts set up by the Congress for trying special kinds of cases. Thus all claims against the United States have to be preferred before the Court of

**Special courts**

Claims. The competence of this court is confined to finding the facts, and it cannot award any damages. Any reparation that may appear justified from the finding of the court is paid to the aggrieved party only by a specific appropriation vote of the Congress. Then there is the United States Customs Court and the Court of Customs Appeals. In view of the protectionist regime the duties of both these courts are of sufficient importance to justify a special organization.

It will be remembered that when the federal constitution was originally framed it was not far removed in the minds of the people from an inter-state convention. Hence it was felt that the observance of its terms would be secure against the new central power or a combination of the several states only if its interpretation and enforcement were left in independent hands. This is the origin not only of the separate and concurrent organization of the federal judiciary in America, but also of its traditions for independence which have nobly withstood the tide of partisanship swelling round the other federal bodies. It has been observed that the separateness of federal law and justice from state law and judiciary is so marked in America, that legally it is possible to have a person tried for the same offence once in the state court and for a second time in a federal court, if only the offence were punishable under both sets of laws. The federal judiciary has got its own independent and powerful organization to enforce its judgments. In each federal district there are a Federal Attorney, who represents the United States in all civil and criminal cases, and a Federal Marshal, who with the help of his staff carries out the orders of the courts. If ever it were necessary, the federal courts

are empowered to call upon the federal army to help in executing the judicial decrees. How very strong is the contrast between this position of independence and strength enjoyed by the American judiciary and the position of restricted and dependent authority held by the Federal Tribunal in Switzerland is only too obvious.

But the function of the federal judiciary in America which has attracted most attention, and has even misled some otherwise careful students, is its constitutional jurisdiction to interpret the constitutional law of the federation and to protect its integrity against violation by any authority. There are in the United States four kinds of law in force. These are in order of validity : the federal constitution, federal legislation, state constitutions and state legislations. It is the duty of the federal court in the pursuit of its normal duties to pronounce on the relative validity of conflicting provisions. In particular, however, that court has to decide whether a state legislature or the federal legislature is competent in terms of the constitution to pass a particular law under which relief may have been demanded. Thus the Supreme Court can question the legality of a law formally passed, if, in its judgment, that law violates a law of higher validity. This is unthinkable in a country like Great Britain, where all laws are passed by the Parliament and the legality of a law is determined only by its having secured the assent of the two houses and the king as required by the constitution. Even in Switzerland, which has a rigid constitution and which is a federation, the Federal Court, as we have seen, has no authority to challenge the validity of laws formally passed by the Federal Assembly. In the United States even before the formation of the

union, this role of constitutional interpretation and guardianship was vested in a number of supreme courts in states, and the particulars of federal evolution in America and the adoption *in toto* of the principle of separation of powers led the framers of the present American constitution to include the practice in the American constitution. But it is not an essential feature either of a federation or of a written constitution to have an independent tribunal which may challenge the legality of law formally passed. The American federal courts have so far discharged their duties in this matter with remarkable self-restraint and ability. On the one hand they have not been tools in the hands of Congresses for the time being in power, and they have not hesitated to declare as illegal a number of laws which in their opinion were in excess of the legislative authority vested in that body. The Congress has no legal advisors of its own, and out of mistake it is possible that it may pass legislation beyond its competence. On the few occasions on which the Congress has allowed itself to run into such error the federal judiciary has checked it; that is to say, in the particular cases brought before them, the courts have refused to apply the law, holding that the law was no law. It is possible that an unconstitutional federal law may work for a time by not having been the basis of litigation, and also that irrespective of the judicial declaration of its invalidity the Congress may not proceed to amend it: but such cases are very rare. A judicial verdict on all doubtful laws is speedily sought, and the legislature acts up to the judicial finding. The federal judiciary has also avoided the other danger of being too narrowly technical and of thwarting the wishes of the framers of the constitution. They have interpreted and applied not only the letter of the law, but also its spirit. By a recourse to the

theory of implied powers they have saved the national government from the awkwardness of seeking even elementary powers by a constitutional amendment, which as we shall see is a very cumbrous process in the United States. The critics of the American Supreme Court have found too great an elasticity in its interpretations rather than too little. But on the whole it must be conceded that the American federal judiciary has discharged its ordinary as well as constitutional functions with a success which would be remarkable anywhere, but is particularly conspicuous in the United States, where the state judiciary in many parts is a by-word for inefficiency, and where the federal authorities very often value party interests more than national service.

### THE GERMAN REICH

Judges are independent and subject only to the law. The ordinary jurisdiction is exercised by the High Court of the Reich and the courts of the states.

**Summary  
of consti-  
tutional  
provisions**

The judges of the ordinary courts are appointed for life. They may be removed from office, permanently or temporarily transferred to another position, or retired only on the authority of a judicial decision, and only upon the grounds and by the methods of procedure fixed by law. Age limits may be fixed by legislation, upon reaching which judges shall retire. Provisional removal from office when authorized by law is not affected by these provisions. In the case of a rearrangement of the courts or their circuits, the state administration of justice may order compulsory transfer to another court or removal from office, but only on condition of the retention of full salary. These provisions do not apply to commercial judges, assessors and jurymen. Extraordinary

courts are prohibited. No one may be withdrawn from his legal judge. Legal regulations regarding courts martial and summary military courts are not affected by this requirement. Military courts of honour are abolished. Military jurisdiction is abolished except in times of war and on board warships. Details are regulated by the law of the Reich. In the Reich and the states, administrative courts shall be established by law for the protection of individuals against regulations and decrees of the administrative authorities. A Supreme Court for the German Reich shall be established by law of the Reich.

There are several features in the organization of the judiciary of the Reich that deserve mention. As in

**Legislative  
centraliza-  
tion and  
judicial  
decentra-  
lization**

Switzerland, so in Germany, all laws civil and criminal are made by the federal legislature, but the administration of justice in its primary stages is in charge of the state courts. In Switzerland even appellate jurisdiction is vested almost exclusively in the cantonal courts. But in Germany the federal court, the Reichsgericht, has the authority to hear appeals from all other courts in the country. Moreover, though the German central court has no independent executive staff, as is the case in the United States, the control of the government of the Reich over those of the states being stronger than that of the Swiss Federal Council over the cantons, the position of the federal court in Germany is also more assured. The state courts, on which most of the original work of adjudication falls, are under the direct control of the state governments, though the general power of supervision and direction in administration of federal legislation vested in the Reich is exercised in the judicial field also. The judges are appointed

and paid by the state governments, and are secured in their tenure by the constitutional provisions as outlined above. An interesting feature of the trial of criminal cases in the state courts is that, along with the assessors, at the request of the public prosecutor, a professional magistrate is appointed to assist them. Over and above these ordinary courts there are courts for special purposes such as the administration of commercial law, and of financial regulations.

Till the advent of the republican regime in Germany there was only one federal court, namely the Reichsgericht. This sits at Leipzig and continues to be the highest court of appeal for the Reich in matters of ordinary law. It has in all ninety-five judges, who sit in a dozen different chambers for the trial of civil and criminal appeals. It has a very limited original jurisdiction, as for instance in cases of treason. Since 1921 a special, and professedly temporary court, known as the Staatsgerichtshof, the supreme court, has been set up. It has special jurisdiction in the matter of impeachment of federal officials at the instance of the Reichstag. The Staatsgerichtshof decides conflicts of private law between the Reich and the states resulting from the transfer of railways and canals by the latter to the former, and similar cases in which property rights of the states are involved. It also judges in matters of constitutional conflict between the various state and federal authorities created by the constitution. This constitutional function of the supreme court has given a new interest to the question as to whether the German courts can sit in judgment over the legality of laws passed by the Reichstag and promulgated by the President according to the proper constitutional procedure. From the

**Reichs-  
gericht and  
Staats-  
gerichtshof**

small evidence of the working of the constitution in very extraordinary times during the last twelve years, no final judgment can be formed, at least by a foreign student. But the very fact that there are very keen differences among German constitutional lawyers on this subject would suggest the conclusion that the judiciary has not been emphatically and positively declared to possess such jurisdiction. In case the supreme court becomes a permanent part of the German federal structure, which is only to be expected, its constitutional precedents of the last decade would go a long way in creating for it a position not dissimilar in respect of constitutional interpretation and guardianship from that occupied by the American Supreme Court. Another probable line of evolution in the German judiciary so as to make it approach the American model is suggested by the provision of the constitution authorizing the creation of new federal courts. To the extent to which the task of applying federal law is taken out of the hands of the state courts, this approximation would be more emphatic. The fact, however, that unlike in the United States, all civil and criminal law is a federal subject in Germany, and the long tradition of state courts administering that law, would militate against the chances of a full fledged parallel system of federal courts ever being introduced. The direction in which new federal courts will be started appears to be that of administrative justice. Under the constitution these can be set up both by the federal and state governments, and already many such have been established. These would then be the only federal courts, outside the extraordinary tribunal (the Staatsgerichtshof), possessing original jurisdiction, the duties of the Reichsgericht being almost exclusively appellate.



## CANADA

The British North America Act provides for the organization of the judiciary as follows. The Governor-General shall appoint the judges of the superior, district and county courts in each province, except those of the courts of probate in Nova Scotia and New Brunswick. Until the laws relative to property and civil rights in Ontario, Nova Scotia and New Brunswick, and the procedure of the courts in those provinces are made uniform, the judges of the courts of those provinces appointed by the Governor-General shall be selected from the respective bars of those provinces. The judges of the courts of Quebec shall be selected from the bar of that province. The judges of the superior courts shall hold office during good behaviour, but shall be removable by the Governor-General on address of the Senate and the House of Commons. The salaries, allowances and pensions of the judges of the superior, district and the county courts (except the courts of probate in Nova Scotia and New Brunswick), and of the admiralty courts in cases where the judges thereof are for the time being paid by salary, shall be fixed and provided by the Parliament of Canada. The Parliament of Canada may, notwithstanding anything in this Act, from time to time provide for the constitution, maintenance and organization of a general court of appeal for Canada, and for the establishment of any additional courts for the better administration of the laws of Canada.

The most outstanding and in fact the unique feature of the Canadian judiciary is that it is entirely a federal or central organization. There are no provincial courts

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of constitutional  
provision**

except the very minor municipal and police tribunals. The Supreme Court at Ottawa, the superior and county courts in the various provinces are all established by central legislation. There is a uniformity of criminal law throughout the country, and also of civil law with the exception of Quebec, which has been allowed to keep its own civil law based on French origins. The judges of all courts are appointed by the Governor-General and are paid out of the federal treasury. As the appointments are during good behaviour and as the salaries are decent, the efficiency and independence of the Canadian judiciary are of a high order. Though appointments are sometimes made on party considerations the functioning of the courts is entirely independent. There are some special courts like the Court of Exchequer and Admiralty. As the competence of the various legislative bodies in Canada is based on the relevant statute of the British Parliament, the courts can call into question the legality of laws passed by Canadian legislatures. With this exception the Canadian judiciary approximates more closely to the British judicial organization than any other prevalent, say, in America, Switzerland, or Germany. The constitutional competence of the Canadian Supreme Court is practically limited by various considerations. The possession by the Dominion Government of the right to veto provincial Acts, and of all residuary powers, reduces to a minimum the occasions when a constitutional conflict may arise. In case one occurs the British Privy Council is always preferred as the final arbiter on judicial issues emerging from the Constitutional Act. As the result of an enactment of the Canadian Parliament, the strict legality of which has sometimes been doubted, the British Privy Council has

practically been excluded from hearing appeals in criminal cases from the decisions of the Canadian Supreme Court. By special leave of the Supreme Court, appeals in civil cases are still heard by the British Privy Council. The Statute of Westminster has not introduced any fundamental change in this respect. So long as there are certain important interests in the Dominion, such as Quebec, who value the role played by the British Privy Council in protecting them in the possession of their special law, the present state may be expected to continue.

### AUSTRALIA

The Commonwealth Act has many detailed provisions bearing on the judicature. The judicial power of the Commonwealth, according to the law of the constitution, shall be vested in a federal supreme court to be called the High Court of Australia, and in such other federal courts as the Parliament may create, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other justices, not less than two, as the Parliament prescribes. The justices of the High Court and of the other courts created by the Parliament shall be appointed by the Governor-General-in-Council, and shall not be removed except by the same authority on an address of both houses of Parliament praying for removal on ground of proved misbehaviour or incapacity. They shall receive such remuneration as the Parliament may fix, but it will not be diminished during their continuance of office.

The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all

**Summary  
of consti-  
tutional  
provisions**

judgments, decrees, orders, and sentences of any justice or justices exercising the original jurisdiction of the High Court; of any other federal court or courts exercising federal jurisdiction, or of the supreme court of any state, or of any other court of any state from which at the establishment of the Commonwealth an appeal lies to the British Privy Council; and of the Inter-State Commission, but as to questions of law only. The judgment of the High Court in all such cases shall be final and conclusive. All matters which at the time of the passing of the Act were referred to the Queen's Privy Council shall be referred to the High Court in appeal from the supreme courts of states. No appeal to the British Privy Council shall lie from the decisions of the High Court in matters of constitutional conflict between states, or between a state on the one hand and the Commonwealth on the other, unless the High Court issues a special certificate to the effect that the matter is suitable for decision by the British Privy Council. In other matters the British Privy Council shall continue to grant permission for appeal to itself from the decisions of the High Court, in matters that are not declared by the Act of the Australian Parliament, for which royal assent has been secured by the Governor-General after reservation of the bill, as being outside the scope of such appeal. Since the passing of the Act of Westminster 1931 the position of the British Privy Council *vis-à-vis* the Dominion courts has been still further weakened. The Commonwealth Parliament, if it wishes to do so, may now pass a law declaring that no appeals whatsoever may be preferred before the British Privy Council.

The High Court shall have original jurisdiction in the following matters: those arising out of treaty;

affecting consuls and foreign state representatives; in which the commonwealth is a party; between states, or residents in different states, between a state and a resident in another state; and those in which injunction is sought against an officer of the Commonwealth. The Parliament may pass laws empowering the High Court to try cases in original jurisdiction in respect of the following matters: interpretation of the Constitutional Act, or of any laws made by the Parliament; admiralty and maritime jurisdiction; and conflict between claims based on laws of different states. The Parliament may apportion all these jurisdictions between the High Court, other federal courts and the state courts. The number of judges shall be prescribed by the Parliament, which may also confer the right to proceed against the Commonwealth or a state. The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the state where the offence was committed, and if the offence was not committed in any state the trial shall be held at such place or places as the Parliament prescribes.

It will be observed from the above-mentioned constitutional provisions that the Australian judiciary is more unitary than the American but less so than the Canadian. In this branch, as in others already noted, the stamp of the American model is visible on the Australian structure. The position outlined for the British Privy Council deserves mention. In matters of constitutional conflict between Australian authorities no appeal can lie to the Privy Council except by special certificate of the Australian Supreme Court. In other matters the Privy Council continues to have appellate jurisdiction, excepting in cases which, by a statute specifically agreed to by the Crown, the Canadian

Australian

**Joint  
organization**

Parliament has placed under the final jurisdiction of the Australian supreme court. The British heritage of a lifelong judiciary appointed by the executive is followed in Australia as much as in Canada, and the results both in efficiency and independence have on the whole been satisfactory. But it is alleged that the comparatively low scale of judicial salaries in Australia is a serious handicap. The special High Court created for conciliation and arbitration, by the very nature of its business, which consists in pronouncing on the rival claims of the employers and the employed, cannot be said to rise to the same high standard. The state courts have been empowered to distribute justice in cases arising out of many federal laws, and appeals lie to the federal courts. Questions regarding constitutional interpretation are, however, reserved entirely for the federal courts.

There are thus varying practices in the different federations, but the trend of the reform is in the direction of having a joint and not a parallel organization of justice. Particularly in cases arising out of federal law, at least a final appeal to a federal tribunal is a necessity. The power of appointment, tenure, and other conditions of service vary from country to country. Still, appointment by the respective executives for long terms, and on secure and decent conditions are a *sine qua non* for an efficient and independent judiciary, the need for which cannot be over-emphasized in a federation.

## CHAPTER VIII

### FEDERAL CITIZENSHIP

THERE are two questions that necessarily emerge in a federal constitution in respect of the position of citizens.

**Dual citizen-  
ship and  
Bill of  
Rights**

Firstly as duality of administrative structure is the very essence of the federal form of government, the position of a citizen of one constituent state in another, in respect of subjects administered by the states, is always a doubtful one. Unless the constitution either of the federation or of the state concerned provides for the extension of privileges of state citizenship to citizens of other states in the federation, there is nothing to differentiate, from the standpoint of a particular state government, between the subject of another state in the union and a foreign subject. That in respect of subjects federally administered all citizens ought to be in a position of equality is indeed a *sine qua non* of a federation. The sovereign people, or whoever else is responsible for the making of the constitution, may, however, feel that even in matters administered by states a certain fundamental unity is necessary. For instance, in the American union and in Switzerland, states are left to themselves in respect of their constitutional changes, but a republican form is insisted upon. In Germany not only a republican but a parliamentary form of government in the states is held to be essential by the constitution. Thus a norm is constitutionally created below which the rights of citizenship enjoyed by the subjects of state governments cannot go. Secondly, as all federations

possess a more or less rigid and written constitution, the rights of citizens also find a prominent place in their constitutional instruments. Now it is a very general experience that the rights of citizens do not get much appreciable solemnity or sanction merely by their inclusion in the constitution, if the normal working of the constitution is not imbued with the spirit of democracy and obedience to law, and if the people themselves do not observe tolerance and discipline. A special significance thus attaches to the organization of a dual citizenship, and the prescription of a fundamental bill of rights in a federal constitution.

#### SWITZERLAND

The Swiss constitution contains many clauses bearing on citizenship. It declares all Swiss people as equal before the law. The constitutional rights of the citizens secured both under federal and state constitutions are guaranteed to the citizens by the federal government.

**Summary  
of consti-  
tutional  
provisions**

The form of government prevalent in the cantons is guaranteed by the federal government only if it ensures the exercise of political rights according to republican forms—representative or democratic—and if it has been accepted by the people and can be revised when an absolute majority of citizens so demand. Thus the constitution secures to the citizens even in their cantons a republican constitution and direct enjoyment of powers of constitutional amendment. The cantons are also compelled to provide for free and compulsory primary education in non-denominational schools. Freedom of commerce and industry is guaranteed throughout the Confederation, with the exception of federal monopolies, customs and commercial regulations,



and sanitary obligations. For the practice of liberal professions the cantons may require evidence of capacity, but the Confederation provides for obtaining such certificates which would hold good throughout the Confederation. Labour legislation is controlled by the cantons, but insurance legislation and general industrial legislation may be undertaken by the federal government. All gaming houses and enterprises exploiting games of chance are prohibited. The secrecy of letters and telegrams is guaranteed. Every citizen of a canton is a Swiss citizen. As such he is entitled, after having duly proved his qualification as a voter, to take part at his place of domicile in all federal elections and pollings. No person may exercise political rights in more than one canton.

A Swiss citizen by settlement enjoys at his place of domicile all the rights of a citizen of the canton together with the rights of a citizen of the commune. Participation in the property of communes, of citizens and of corporations, and the right to vote in matters exclusively connected therewith, are excluded from these rights, unless otherwise provided by cantonal legislation. In cantonal and communal matters a Swiss citizen by settlement acquires the right of an elector after having settled for a period of three months. Cantonal laws concerning settlement and electoral rights in communal affairs possessed by citizens by settlement shall be submitted to the Federal Council for approval. Federal legislation shall determine the conditions upon which foreigners may be naturalized and those upon which Swiss citizens may renounce their nationality. No canton may expel from its territory any citizen of the canton nor deprive him of his rights as a native or burgher. Every Swiss citizen has the right to settle in any part of Switzerland

subject to the production of a certificate of origin or a similar document. The right of settlement may, by way of exception, be refused to, or withdrawn from, persons who have been deprived of their civic rights as a result of penal conviction. The right of settlement may also be withdrawn from persons who have been repeatedly sentenced for grave misdemeanours, or from persons who become a permanent burden upon public charity, and whose commune or canton of origin refuses to provide adequate assistance for them after having been officially requested to provide it. In cantons in which domiciliary relief is provided, permission for settlement may be made conditional, in the case of the citizens of the canton, upon the person being capable of work and not having been a permanent charge on public charity in his former domicile in the canton of origin. Every exception on account of poverty must be confirmed by the government of the canton of domicile, and notified in advance to the canton of origin. The canton in which a Swiss citizen settles may not require from him any security or impose any special charge upon him in respect of such settlement. Similarly, communes may not impose on Swiss citizens domiciled within their area any charges other than those imposed upon their own citizens. The maximum chancellery fee chargeable in respect of permits for settlement shall be determined by federal law. Persons settled in Switzerland shall normally be subject in all matters of civil law to the jurisdiction and legislation of their place of domicile. Federal legislation will make the necessary provisions for the application of this principle and for preventing double taxation of a citizen. Federal legislation shall define the difference between settlement and temporary residence, and at the same time prescribe

the regulations governing the political and civil rights of Swiss citizens during temporary residence. A federal law shall make provision as to the expenses of the illness and burial of poor citizens of one canton who fall ill or die in another canton.

Liberty of conscience and creed is inviolable. No person may be compelled to become a member of any religious association, submit to any religious instruction, perform any act of religion, or incur any penalties, of any kind whatsoever, by reason of his religious opinions. Persons exercising the authority of parent or guardian are entitled, in conformity with the foregoing principles, to determine the religious education of children up to the age of sixteen years. The exercise of civil or political rights may not be limited by any ecclesiastical or religious requirements or conditions of any kind whatsoever. No person may refuse, on the grounds of religious opinion, to fulfil any obligation of citizenship. No person may be compelled to pay taxes the proceeds of which are specifically appropriated in payment of the purely religious expenses of any religious community of which he is not a member. The application of this principle will be determined by federal legislation. The free exercise of religion is guaranteed within limits compatible with public order and morality. The cantons and the Confederation may take measures necessary to maintain public order and peace between the members of different religious communities and to prevent encroachments by ecclesiastical authorities upon the rights of citizens and of the state. The Order of Jesuits and other affiliated societies may not be admitted into any part of Switzerland, and all activities in church and school are forbidden to their members. This prohibition may be extended by federal decree to other

religious orders whose activity is inimical to the state or disturbs the peace between different religions. The founding of new religious orders is prohibited. The right to marry is under the protection of the Confederation. No impediment to marriage may be based upon grounds of religious belief, poverty of either party, their conduct or any other police consideration. Marriages concluded in any canton or abroad in accordance with the law there prevailing shall be recognized as valid throughout the Confederation. A wife acquires on marriage the citizenship of the commune of her husband. Children born before marriage are legitimized by the subsequent marriage of their parents. No marriage fee or similar impost may be levied from either party.

Liberty of the press is guaranteed, but the cantons may by legislation take measures necessary for the prevention of abuses. Such laws must be submitted to the Federal Council for approval. The Confederation may also prescribe penalties in order to suppress abuses of the liberty of the press directed against the Confederation and federal authorities. Citizens have the right to form associations provided that the objects and methods of such associations are not unlawful or dangerous to the state. Cantonal legislation will make the necessary provision for the prevention of abuses. The right of petition is guaranteed. No person may be withdrawn from his proper judge. Accordingly, extraordinary tribunals may not be established. Ecclesiastical jurisdiction is abolished. Civil suits are tried in the canton of the defendant's domicile. Imprisonment for debts is abolished. Every canton is bound to accord to citizens of other cantons the same treatment as to its own citizens in regard to<sup>e</sup> legislation and judicial proceedings. Sentences of death may not be pronounced for any

political offence. Corporal punishment is forbidden. Federal legislation will prescribe the limits within which a Swiss citizen may be deprived of his political rights. Extradition from one canton to another will be dealt with by federal legislation, but extradition may not be made obligatory for political or press offences. The Confederation may expel from its territory foreigners who compromise the internal or external security of Switzerland. Every Swiss male is liable for military service. Soldiers who lose their lives or suffer permanent injury to their health in the federal service are entitled to assistance from the Confederation for themselves or their families if in need. Every soldier shall be supplied free of charge with his first outfit of arms, equipment and clothing. Arms remain in the possession of the soldier upon conditions to be determined by federal legislation. The Confederation shall prescribe uniform regulations as to the tax on exemption from military service.

It will be observed that citizenship is primarily a cantonal concern in Switzerland, the federation contenting itself with adopting the citizens of the cantons as citizens of the federation. The position is the same in this respect as in Germany, but quite the reverse of what exists in the United States. The constitution leaves to the federal legislature the regulation of naturalization of foreigners. But no such law having been actually passed, naturalization is also a state and in turn a communal concern. Every commune has its own regulations for the grant of communal citizenship to a foreign resident. The cantons adopt all communal citizens as cantonal citizens, and the latter are adopted as federal citizens.\* Thus a lack of uniformity is inevitable in respect of

**Lack of  
uniformity**

naturalization of foreigners in Switzerland. Some communes have set up such heavy naturalization fees that their citizenship is open only to the richer foreigners. On the other hand there are some communes where the acquisition of citizenship is almost a matter of course. The stringent provisions against the Jesuits and the formation of any new orders are reminiscent of the religious feuds that have beset the course of federal evolution in Switzerland. Though citizenship is mainly cantonal, still all the rights conferred on the citizens either by cantonal or federal constitutions are enforceable by federal action.

### THE UNITED STATES

The American constitution as originally framed contained very few provisions regarding the rights of citizens. By a number of amendments, particularly of the year 1791, numerous additions have been made. The original articles referred only to the liberty of escaped slaves, and to the necessary provision of a republican form of government in the states. No less than nine articles bearing on the rights of citizens were added to the constitution in 1791. Article fourth in the original constitution contained a section to the effect that the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. The first of the amendments of the year 1791 provided that Congress shall make no law respecting the establishment of a religion, or prohibiting the exercise thereof; or abridging the freedom of speech or of press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. The succeeding clauses dealt with diverse

#### Summary of consti- tutional provisions

matters of citizens' rights: a well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law. The rights of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall be issued but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons and things to be seized. No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury shall be

otherwise re-examined in any court of the United States than according to the rules of the common law. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. It is specifically laid down by a concluding article on this subject, that the enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people. Slavery was abolished by a special amendment in 1865. By a constitutional amendment three years later it was provided that all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. By an amendment of 1870 and another of 1920, it is provided that the right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, colour, previous condition of servitude, or sex. The right to manufacture, transport and sell liquor was abolished by an amendment of 1919.

The citizenship in America is primarily a national and federal one, and includes that of the states. Foreigners can acquire the full rights of citizenship only by availing themselves of the provisions of the law regarding federal citizenship. But the states of their own accord confer on the aliens resident in their territory many rights of citizenship. A residence of an average period of one year is usually considered to be adequate to qualify

**Citizenship  
primarily  
national**



for these state-conferred rights. But there are many variations in both directions. Some states consider three months as sufficient residential qualification, while others are satisfied with nothing less than two and a half years. The procedure which Congress has laid down for the formal acquisition of the rights of federal citizenship is a very complicated one. But a stay of five years in the United States is considered as adequate to qualify for an award of citizenship, for which an application has to be sent two years earlier. Till the year 1868 it was held by the Supreme Court that state citizenship did not necessarily carry with it federal citizenship. By an amendment of that year it was definitely declared that 'All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the states wherein they reside'. The actual exercise of the rights and obligations of citizenship has no doubt a double aspect, corresponding to the two sets of governmental institutions. But the concept of citizenship, as of sovereignty, in a federation is one. No state, as has been noted above, can either confer or withdraw the rights of formal citizenship. This can be done only by federal authority.

### GERMANY

Amongst all the federal constitutions that of Germany makes the most elaborate provision for the fundamental rights and duties of citizens. In fact, over fifty articles of the constitution are devoted to this subject out of a total number of 181. One whole section deals with the individual citizen. It declares that all Germans are equal before the law. Men and women

**Summary  
of consti-  
tutional  
provisions**

have fundamentally the same civic rights and duties. Public privileges created by law or disadvantages of birth or rank shall be abolished. Old titles are merely parts of names and new ones shall not be conferred. Nor are Germans allowed to accept foreign titles. Academic titles, however, constitute an exception. Nationality in the Reich and the states is acquired and terminated as may be provided by the law of the Reich. Every subject of a state is also a subject of the Reich. Every German has the same rights and duties in any state of the Reich as the subjects of that state. All Germans enjoy the right of change of domicile within the whole Reich. Everyone has the right to stay in any part of the realm that he chooses, to settle there, acquire landed property, and pursue any means of livelihood. Restrictions may be imposed only by the law of the Reich. All nationals of the Reich within and without the territory of the Reich are entitled to its protection against foreign powers. No German may be handed over to a foreign government for prosecution or punishment. Every German is entitled to emigrate to countries outside the Reich, except when restricted by a law of the Reich. Sections of the population of the Reich speaking a foreign language may not be restricted, whether by way of legislation or administration, in their free racial development; this applies specially to the use of their mother tongue in education as well as in questions of internal administrations and administration of justice. Personal liberty is inviolable. No encroachment or deprivation of personal liberty by any public authority is permissible except in virtue of a law. Persons who have been deprived of their liberty shall be informed, at the latest on the following day, by what authority and on what grounds the deprivation of liberty has been ordered;

opportunity shall be given them without delay to make legal complaint against such deprivation. The residence of a German citizen is an inviolable sanctuary for him; exceptions are admissible only in virtue of laws. No punishment may be inflicted for any action unless the action was designated by law as punishable, before it was committed. The secrecy of correspondence and of the postal, telegraphic and telephonic services is inviolable. Exceptions may be permitted only by the law of the Reich. Every German has the right within the limits of the general laws, to express his opinions freely, by word of mouth, writing, printed matter or picture, or in any other manner. This right must not be affected by any other conditions of his work or appointment, and no one is permitted to injure him on account of his making use of such rights. No censorship shall be enforced, but restrictive regulations may be introduced by law in reference to cinematograph entertainments. Legal measures are also admissible for the purpose of combating bad and obscene literature, as well as for the protection of youth in public exhibitions and performances.

The next section deals with the rights of citizens in relation to the life of the community. Marriage, as the foundation of family life and of the preservation and growth of the nation, is under the special protection of the constitution. It rests upon the equal rights of both sexes. The preservation of the purity and health of the family and its social advancement is the task both of the state and the local authorities. Families with a large number of children have a right to corresponding provision. Motherhood has a claim upon the protection and care of the state. The rearing of the rising generation, in physical, mental and social efficiency, is the highest duty and natural right of the parents, the

accomplishment of which is watched over by the community and the state. By means of legislation opportunity shall be provided for the benefit of illegitimate children, equal to that enjoyed by the legitimate children. Young persons shall be protected against exploitation, as well as against moral, spiritual or bodily neglect. Both the state and local authorities must undertake the necessary arrangements. Protective measures of a compulsory character may only be imposed by virtue of a law. All Germans have the right without notification or special permission to assemble peaceably and unarmed. Open-air meetings may be made notifiable by a law of the Reich, and in case of direct danger to public security may be forbidden. All Germans have the right to form unions and associations for purposes not in contravention of the penal laws. This right may not be restricted by preventive regulations. The same provisions apply to religious unions and associations. Every union is at liberty to acquire legal rights in accordance with the provisions of the Civil Code. These rights shall not be refused to a union on the grounds that its objects are of a political, socio-political or religious nature. The freedom and the secrecy of elections are guaranteed. The right of individual and collective petitioning is guaranteed. All citizens of the state, without distinction, are eligible for public offices, as provided by law, and in accordance with their qualifications and abilities. No special disqualification exists against women employees. Officials are appointed for life, save as may be otherwise provided by law. Officials are servants of the community and not of any party. Provision is also made by the constitution to protect the officers against injustice. It is the duty of every German to undertake the duties of honorary offices according to the

provisions of the laws. All citizens are bound to undertake official duties, according to law. This clause specially applies to military service.

A separate section is devoted to the religious rights of citizens. All inhabitants of the Reich enjoy full liberty of faith and of conscience. The undisturbed practice of religion is guaranteed and is under special state protection. The general laws of the states remain unaffected by these clauses. Religious views are no barrier to political rights. There is no state church. Religious organizations are placed on the same footing as others. Education and schools are the subject-matter of another section providing for the rights of citizens. Art and science and the teaching thereof are free. The state guarantees their protection and participates in furthering them. The training of teachers is regulated by the Reich on a uniform basis. Teachers in public schools have the rights and duties of state officials. The whole system of education is under the supervision of the state, which may assign a share in this work to the local authorities. School inspection is carried out by competent, trained and expert officials of high rank. School attendance is compulsory for all. The fulfilment of this obligation is provided for by the establishment of primary schools, with at least eight years' course, followed by continuation schools with a course extending to the completion of the eighteenth year of age. Instruction and all accessories are free of charge in the primary and continuation schools. The system of secondary, higher and vocational education is to be organically developed, and students are to be admitted according to their capacity and inclination and not according to the economic condition of parents. At the request of those responsible for education of children, primary schools of a

denominational character may be established. Grants shall be made towards meeting the expenses of educating eligible poor children. Private schools require the special sanction of the state, and have to conform to standards laid down by the state. Primary schools are to be privately established only for the benefit of a special community or in cases where the needs are not met by public schools. All schools shall aim at inculcating moral character, a civic conscience, personal and vocational efficiency, imbued with the spirit of German nationality and international goodwill. In giving instruction in public schools, care must be taken not to give offence to the susceptibilities of those holding different opinions. The duties of citizenship, and technical education, are subjects of instruction in the schools. Upon the completion of the period of school attendance, every pupil receives a copy of the constitution. Except in secular schools religious instruction is a regular subject of study.

One whole section is set apart to enunciate the principles of economic organization recognized by the Reich. In view of the fact that the present constitution was the outcome of a revolution predominantly socialistic in its character, special significance attaches to these clauses. It starts with the following statement: the organization of economic life must correspond to the principles of justice, and be designed to ensure for all a life worthy of a human being. Within these limits the economic freedom of the individual must be guaranteed. Legal compulsion is permissible only in order to enforce rights which are threatened, or to subserve the pre-eminent claims of the commonweal. Freedom of trade, industry and contract, according to the laws of the Reich, is guaranteed, though usury is forbidden. Contracts which

offend against the requirements of morality are declared to be void. The right of private property is guaranteed by the constitution. Its extent and the restrictions placed upon it are, however, defined by law. Expropriation may be effected only for the benefit of the general community and upon the basis of law. It shall be accompanied by due compensation, save in so far as may be otherwise provided by a law of the Reich. In case of dispute about compensation an appeal to the courts is allowable unless a law otherwise decides. The ownership of property entails obligations. Its use must at the same time serve the common good. The right of inheritance in accordance with the provisions of the law is guaranteed. The share of the state in any inheritance is regulated by the law. There are also some provisions calculated to encourage distribution of agricultural land among cultivators. It is also laid down that the cultivation and full utilization of land is a duty the landowner owes to the community. Increment in the value of landed property, not accruing from any expenditure of labour or capital upon the land, shall be devoted to the uses of the community. All riches in the soil and all natural sources of power of economic value shall be under the control of the state. Subject to compensation being paid, the Reich may, by legislation, take over any other concern which may be suitable for socialization. Further the Reich may by legislation, in case of pressing necessity and in the economic interests of the community, oblige economic undertakings and associations to combine on a self-governing basis, for the purpose of ensuring the co-operation of all productive factors of the nation, associating employers and employees in the management, and regulating the production, manufacture, distribution, consumption, prices and the import and export of

commodities upon principles determined by the economic interests of the community. Labour is under the special protection of the Reich, which will enact a uniform labour code. Copyrights and patents are recognized. Freedom of association for economic improvement for all occupations is guaranteed. All employees must have the leisure to discharge duties of citizenship conferred upon them. The Reich will, with the full co-operation of insured persons, create a comprehensive scheme of insurance for the maintenance of health and fitness for work, provision for motherhood, old age, infirmity and the vicissitudes of life. The Reich will initiate international regulation of the conditions of workers sanctioned by law with a view to securing for the working class of the world a universal minimum of social rights. It is the moral duty of every German, without prejudice to his personal liberty, to make such use of his mental and bodily powers as shall be necessary for the welfare of the community. Every German must be afforded an opportunity to gain his livelihood by economic labour. Where no suitable opportunity can be found for him, provision shall be made for his support. The independent middle class in agriculture, industry and commerce, shall be encouraged by legislative and administrative measures, and shall be protected against exploitation and oppression. A very long article in this section recognizes the right of the workers to be associated in the settlement of wages and other conditions of work, and recognizes the organizations of both workers and employers in all industries and districts. A workers' council for the Reich is also recognized. These rival interests are further to be jointly organized in District and National Economic Councils. The legislative powers conferred on these bodies have already been



reviewed. The Reich is declared to be the sole authority regarding these organizations.

The laws by which foreigners can acquire German nationality or Germans may lose theirs, are made by the Reich. But historically the citizenship in Germany is primarily a state citizenship and all German citizens are declared to be possessed of a common citizenship in the empire.

**Special features**

The clauses that provide for the cultural and economic protection of minorities are peculiar. They are designed to appease the many small communities in Germany which speak a separate language and are possessed of a separate religious and cultural unity. The details regarding personal rights and obligations into which the constitution has strayed are almost meticulous. The provisions for school inspection and curriculum can hardly be said to be fit occupants of a declaration of rights. On the other hand, there are some provisions which are hardly better than copy book maxims, having no force either as a law or even as a programme. That 'all Germans should exert themselves in body and mind for the good of the community', can be of little service in securing for the state any specific obligation from the citizens that it otherwise would not claim. It appears that many clauses have been introduced in the constitution simply for their educational value. In many cases the views of the rival parties that formed the personnel of the Weimar Assembly have been incorporated side by side as a compromise. Thus the enunciation of the rights of workers, for whom the extreme socialists stood, is followed by an assurance to the independent producers of the middle class in agriculture and industry. It is to be noted, however, that unlike many other constitutions the German constitution attempts to maintain

a balance between the rights of citizens and the obligations they owe to the state. In fact as one author<sup>1</sup> has put it: 'In recognizing the liberties of the individual the object is no longer to protect him against the state, but to permit him to co-operate in the most effective fashion in the well-being of all.' Even this detailed and philosophical enunciation of the rights of citizens is not, however, immune from legislative and executive encroachment. The President may temporarily suspend many vital rights of citizenship, and the suspension may be indefinitely continued by the legislature.

#### CANADA AND AUSTRALIA

The distinction between constitutional law and ordinary law is unknown to British jurisprudence. Such rights as are conferred and such duties as are placed on the citizens are provided for by the ordinary law of the land. Hence neither the British North America Act nor the Commonwealth of Australia Act contains any references to the rights of citizens, as is the case with the three other federal constitutions hitherto mentioned. In Canada, federal citizenship is uniform throughout the Dominion and is secured by Dominion legislation. The civic position of all the citizens is, therefore, the same in all the provinces. The constitution of every province may regulate the privileges of its citizens in respect of provincial subjects in any way, but their citizenship both of the Dominion and of the province of domicile remains intact. In Australia, citizenship was primarily a state citizenship, but a separate federal franchise is now provided and immigration and naturalization are regulated by federal

No separate  
Bill of  
Rights

<sup>1</sup> Brunet, *The German Constitution*.

legislation. In Australia as in other federations the citizens of one state enjoy in others all the privileges of the latter's citizens. The actual rights and obligations of citizens obtaining in Canada and Australia are not very far different from those in existence in the three other federations, as already detailed, nor is the security and sanction behind them any less reliable. But it is, as observed above, a principle of British law that all law is of uniform validity. In Australia no doubt a separate procedure is provided for constitutional amendment, but the principle governing the rights of citizens is the same there as in other parts of the British Empire.

## CHAPTER IX

### CONSTITUTIONAL AMENDMENT

The method by which the constitution of a state can be amended is always an important feature of governmental organization. The ease with which changes in the political situation and ideas can be converted into the law of the constitution determines the course of constitutional evolution. In a country where the method of constitutional amendment is very easy, there is at least the probability that far-reaching changes in the fundamental law will be brought about in a haphazard fashion, and without the necessary sanction of informed public opinion behind them. On the other hand if the process of amendment is unusually rigid the course of political evolution and of constitutional ideas tends to outrun the letter of the fundamental law, and thus either the law tends to be disregarded or the governmental machine jars and creaks in a very inconvenient and harmful fashion. Almost all the modern constitutions have invested their fundamental laws with a special degree of solemnity by providing an extraordinary procedure or body for the amendment of the constitution. In a federation where the relations between the states on the one hand and the central government on the other are of the nature, if not of the form, of a covenant, the need for extraordinary procedure for constitutional amendment is all the greater. Thus over and above the general importance attaching to the process of amendment, in a federation the security of the respective rights

**Security  
and  
flexibility**

and functions to be enjoyed by the two sets of powers depends on the degree of rigidity in the constitutional law, and on the authority which is invested with the necessary powers of constitutional amendment. It has been already noted that the current of federal evolution is always changing. Centripetal and centrifugal tendencies get the better of the existing position now and then, and unless an amending method with a sufficient admixture of ease and rigidity is provided, there will be deadlocks, inefficiency and revolutions. It might also be observed that in most cases the rights of citizenship considered in the last chapter are all provided for in the constitution, and unless the latter is of sufficient strength the rights of citizens may be adversely affected. The security of the rights of individuals and of states, the distribution of powers between the state and central governments, the regulation of the course of federal evolution—all these are very vitally influenced by the provisions that each federal constitution contains for its own amendment.

### SWITZERLAND

One whole chapter in the Swiss constitution is devoted to the subject of the revision of the constitution.

**Summary  
of consti-  
tutional  
provisions**

The federal constitution, it is provided, may at any time be wholly or partially amended. A total revision is effected through the forms required for passing federal laws. When either chamber of the Federal Assembly passes a resolution for the total revision of the constitution, and the other chamber does not agree, or when fifty thousand Swiss voters demand a total revision, the question whether the constitution

ought to be revised is in either case submitted to the people, who vote yes or no. If in either case a majority of Swiss citizens who vote pronounce in the affirmative, there shall be a new election of both councils for the purpose of undertaking the revision. A partial revision may take place by means of the popular initiative, or through the forms prescribed for passing federal laws. The popular initiative consists in a demand by fifty thousand Swiss voters for the addition of a new article to the constitution, or the repeal or modification of certain articles of the constitution already in force. If by means of the popular initiative several different provisions are presented for revision or for addition to the federal constitution, each must form the subject of a separate initiative demand. The initiative demand may take the form of a proposal in general terms or of a bill complete in all details. When a demand is couched in general terms the Federal Assembly, if it approves thereof, will proceed to undertake the partial revision in the sense indicated in the demand, and will submit it for adoption or rejection by the people and the cantons. If, on the contrary, it does not approve, the question whether there shall be a partial revision or not must be submitted to the vote of the people; if a majority of Swiss citizens taking part in the voting pronounce in the affirmative, the Federal Assembly will proceed to undertake the revision in conformity with the decision of the people. When a demand is presented in the form of a bill complete in all details, and the Federal Assembly approves thereof, the bill shall be submitted for adoption or rejection by the people and the cantons. If the Federal Assembly does not approve, it may frame and submit to the referendum a bill of its own, and recommend to the people the rejection of the bill proposed by popular

initiative. Federal legislation shall determine the formalities to be observed in regard to popular initiative demands and to voting concerning the revision of the federal constitution. The revised federal constitution, or the revised part thereof, shall come into force when it has been accepted by a majority of the Swiss citizens taking part in the voting thereon and by a majority of the states. In reckoning a majority of the states the vote of a half-canton is reckoned as a half-vote. The result of a popular vote in each canton is to be regarded as the vote of the state.

The compulsory referendum in constitutional legislation, and the other provisions regarding constitutional amendment in Switzerland appear to some observers as peculiarly rigid methods. In fact the Swiss familiarity with the methods of direct legislation and the co-operation and understanding between the legislature and the people have rendered the course of constitutional amendment as smooth as it need be. Leaving abnormal periods of constitution-amending activity out of account, it may be observed that the Swiss constitution is, among federal constitutions, the most steadily under the revising action of the people and the legislature. In fact this ease of amendment and its regular exercise is one important cause, which brings about the relatively smooth course of Swiss politics. Since 1848, when the present constitution was framed, there has not been a single political upheaval of great magnitude in Switzerland. The provision for a total revision of the constitution seems almost to legalize a veritable revolution. In practice, however, as constitutional amendments are secured whenever needed, a wholesale revision has never been attempted. †

Smooth  
course of  
Swiss  
politics

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Smooth  
course of  
Swiss  
politics

## THE UNITED STATES

The method of amending the American constitution is contained in Article Fifth which runs: The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to the constitution, or on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof as the one or the other mode of ratification may be proposed by the Congress. No state without its consent shall be deprived of its equal suffrage in the Senate.

**Article V  
of the  
constitution**

These clauses lay down two methods of initiative and two of ratification in constitutional amendments. The second alternatives in both respects have never been utilized since their inception. The Congress has proposed all the nineteen amendments that have been passed till now, and all these have been ratified by three-fourths of state legislatures. A convention for constitutional purposes has never been found to be necessary or feasible since the first convention of 1787. The constitution has made no provision for the composition and election of the convention, were one found to be necessary: nor has the Congress passed any laws bearing on the subject. Unlike the Swiss constitution, the American constitution does not provide for its total amendment. The President, who has a limited veto on ordinary legislation, has no veto of any kind in constitutional matters, as these are finally dependent on the state legislatures. The

**Congress  
and state  
legislatures**

people at large have no initiative or control in matters of amendment. The state legislatures have an initiative but in practice it is not exercised, as no convention has ever been pressed for by them. The existence of a strong party organization makes up for this deficiency, as any amending proposal which secures general support will be sponsored by either of the parties having a substantial voice in the Congress. The right of equal representation to the Senate conferred upon the states cannot be taken away by any constitutional amendment except by and with the consent of the state affected. The Congress receives in the course of its ordinary legislative business a large number of proposals for the amendment of the constitution. But most of these do not receive the necessary support either in committee or in the open chamber.

The judiciary in America by its wide powers of interpretation also helps if not in the amendment of the constitution, at least in its broad interpretation. In exercise of its functions it has to judge not only the letter but the intention of the all too few words which constitute the fundamental instrument of the American constitution. In view of the general misunderstanding of the role played by the American judiciary in the field of constitutional amendment, the rules of interpretation followed by Chief Justice Marshall, the greatest of American judges, might be noted here with advantage. He held that every power alleged to be vested in the national government or in any of its organs must be affirmatively proved to have been granted. But when once the fact of a grant by the people to the national government of such a power is established, that power will be construed in a broad manner. The strictness applied in determining its

**Judicial  
amendment**

existence gives place to liberality in its application to concrete cases. This dictum has sometimes been challenged by the successors of Marshall, but it is still the most generally accepted mode of judicial review of American legislation. Usage, also, that great modifier of constitutions, has not been altogether lacking in its influence on the American constitution. This is borne out, for instance, by the binding convention that the same person is not elected for the presidency for the third time, and by the requirement that representatives shall be residents of districts for which they are chosen. The country-wide agitation in the United States over the question of the repeal of the prohibition laws, which are already disregarded on a large scale, proves that the rigidity of the amending clause has given rise to two evils: (i) divorce between facts and law; and (ii) frequent political upheavals.

### GERMANY

Article seventy-six of the German constitution lays down the process of constitutional amendment as follows: The constitution may be amended by legislation. But decisions of the Reichstag as to these amendments come into effect only if two-thirds of the legal total of members are present, and if at least two-thirds of those present have given their consent. Decisions of the Reichsrat in favour of the amendment of the constitution also require a majority of two-thirds of the votes cast. When an amendment is decided by an appeal to the people as the result of a popular initiative, the consent of the majority of voters is necessary. Should the Reichstag have decided on an alteration of the constitution in spite of the objection of the Reichsrat,

**Constitutional provision**

the President of the Reich shall not promulgate the law if the Reichsrat within two weeks demands an appeal to the people.

The most outstanding fact about these provisions is that they indicate the normal legislature as the constitution-amending body. The procedure to be followed is, however, extraordinary, and special safeguards are provided. Thus the German provisions in this respect are a compromise between safety and flexibility. It is, however, too early to pass any judgment on the provisions as the experience of their working is only recent. We can only say that they are natural in a country where the Reichsrat is representative of the views of the state and can always call for a referendum. The predominant position of one state is, however, a very doubtful condition for the success of the practice of the normal legislative machinery being utilized for constitutional amendment. Unusual as the conditions in Germany are, experience gained till now does not indicate that the process of amendment is too easy.

**Transitional character of the constitution**

#### CANADA

The Canadian constitution is based on an Act of the British Parliament. No clause in that Act makes any provision for the amendment of the federal constitution, nor is the subject of constitutional amendment included in the list of central subjects. This leaves the Canadian Parliament to recommend to the British Parliament from time to time such amendments to the Constitutional Act as it may deem necessary. These are, in practice, passed by the Imperial Parliament

**The British Parliament and Privy Council**

as a matter of course. The Provincial legislatures are, however, empowered to amend their own constitutions in the normal process by legislation, excepting the office of the Lieutenant-Governor, which presumably is to be treated in the same way as the federal machinery. In a way this lack of amending power is a serious weakness in the Dominion's autonomy. But it invests the provinces with a security for their powers which is very desirable and indeed essential for the satisfactory enforcement of the federal principle. It remains to be seen how long the Canadian people consent to be led by the British Parliament in this respect. In practice the present arrangements have not been found to be inconvenient. So also the competence of the British Privy Council to interpret and apply the Constitutional Act has been valued by the Canadians. The Statute of Westminster recently passed empowers the Dominion legislatures, among other things, to amend laws passed by the British Parliament which are applicable to the Dominions. But in respect of the fundamental law of the constitution, namely the British North America Act, it is specifically provided that the Statute of Westminster does not apply to the provisions of that Act. Thus the Imperial Parliament is the only channel through which the constitution of the Dominion can be changed. In fact, as noted above, this will be done, in future as in the past, at the expressed desires of the Dominion Parliament itself. In matters affecting the Provinces the Imperial Parliament will not act except with the consent of the Provinces concerned.

#### AUSTRALIA

Unlike the British North America Act, which makes no provision for its amendment other than that

of legislation by the British Parliament, the Commonwealth of Australia Act contains a separate chapter on the subject of alteration of the constitution. The exclusive manner of amending the constitution is laid down as follows; the proposed law for the alteration of the constitution must be passed by an absolute majority of each house of the Parliament, and not less than two and not more than six months after its passage through both houses the proposed law shall be submitted in each state to the electors qualified to vote for the election of members of the House of Representatives. But if either house passes any such proposed law by an absolute majority and the other house rejects or fails to pass it, or passes it with any amendment to which the first mentioned house will not agree, and if after an interval of three months the first mentioned house in the same or the next session again passes the proposed law by an absolute majority, with or without any amendment which has been made or agreed to by the other house, and such other house rejects or fails to pass it, or passes it with any amendment to which the first mentioned house will not agree, the Governor-General may submit the proposed law as last proposed by the first mentioned house, and either with or without any amendments subsequently agreed to by both houses, to the electors in each state qualified to vote for the election of the House of Representatives. When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But so long as adult suffrage has not been uniformly introduced in all the states,<sup>1</sup> the votes for and against

<sup>1</sup> Universal suffrage has already been introduced as noted in a previous chapter.

cast in the states where adult suffrage prevails shall be counted as one-half of the actual number cast. And if in a majority of the states a majority of the electors voting approve the proposed law, and if the majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Crown's assent. No alteration diminishing the proportionate representation of any state in either house of Parliament, or the minimum number of representatives of a state in the House of Representatives, or increasing, diminishing or otherwise altering the limits of the state, or in any manner affecting the provisions of the constitution in relation thereto, shall become law unless the majority of the electors voting in that state approve of the proposed law. The constitutions of the states are alterable according to the provisions contained in them for their own alteration. So far as constitutional amendment is concerned, the Statute of Westminster leaves the position where it was. It is specially provided that: 'Nothing in this Act shall be deemed to confer any power to repeal or alter the constitution or the Constitution Act of the Commonwealth of Australia otherwise than in accordance with the law existing before the commencement of the Act.'



# CHAPTER X

## FEDERAL FINANCE

It is not relevant to the main theme of this book to describe in detail either the organization or the existing condition of finances in the five principal federations. Financial powers are an integral part of the sovereignty of the state, and hence the distribution of taxing authority between the federal and state governments has considerable constitutional significance. As, moreover, there is a duality of administrative organs in a federation the question arises as to the adequacy and suitability of the arrangements made by the constitution for the service of these respective powers. An attempt to keep the local and central powers as distinct from one another as possible, and to find for each sources of revenue over which it has complete administrative control is natural to all framers of federal constitutions. But facts have in many cases proved too strong for this academic exclusiveness, and in practice a good deal of common ground between the central and state governments has developed. It is intended here to outline these relations and tendencies, and to indicate the main sources of revenue and heads of expenditure of the principal federal governments.

### SWITZERLAND

The Swiss constitution does not contain any special provisions regarding the financial side of federal

organization. In the course of the general clauses, however, the following references to the topic occur.

**Financial provisions of the constitution**

Fees and royalties from federal concessions for the utilization of water power are received by the central government. For the carrying out of the cantonal obligations in respect of primary education the central government grants subventions to the cantons. Subject to some fundamental rules such as its non-denominational character, the actual organization and control of primary education is in the hands of the cantonal governments. Customs duties are within the province of the federal government which may levy import and export taxes. The collection of federal customs must be regulated in accordance with the following principles:—

1. *Import taxes.*

(a) Materials necessary to the industry and agriculture of the country must be taxed as lightly as possible.

(b) The same principle applies to commodities necessary for the maintenance of life.

(c) Articles of luxury must be subject to the heaviest taxes. Except where absolutely impossible these principles must be observed in concluding commercial treaties with foreign nations.

2. *Export taxes* must be as moderate as possible.

3. Legislation on *customs* will contain suitable provisions for the continuance of commercial and market intercourse across the frontier.

These provisions do not preclude the Confederation from taking exceptional measures temporarily to meet abnormal circumstances. There is a federal monopoly in salt, gunpowder and liquor. The net receipts accruing

from duties upon the sale of distilled beverages remain the property of the cantons in which they are collected. The net receipts of the Confederation accruing from distillation within the country and the corresponding increase in duties on distilled beverages imported from abroad are distributed among all the cantons in proportion to their populations. The cantons must spend at least ten per cent of the receipts in combating the causes and effects of alcoholism. Posts and telegraphs are a federal monopoly and all revenues from the same belong to the Confederation. The right of coinage and of issuing paper money is exclusively vested in the Confederation. The Confederation can levy stamp duties except on documents concerning landed property and mortgages. The expenses of the Confederation are thus met by,

- (a) revenues from federal property;
- (b) federal customs;
- (c) posts and telegraphs;
- (d) the gunpowder monopoly;
- (e) half the proceeds of the military exemption taxes levied by the cantons;
- (f) contributions from cantons determined by federal legislation with reference to their wealth and taxable capacity; and
- (g) stamp duties.

In the year 1915, by a special constitutional amendment, the federal income-tax was introduced to meet war expenditure. This was treated as a temporary tax, and according to present provision will lapse in 1934. It brings in only a small revenue which is now utilized for paying off part of the national debt.

The following table gives the budget estimates of the Swiss Confederation for the year 1931.

Source of Revenue	Francs	Expenditure Branch of	Francs
Capital invested ...	27,234,820	Debt charges ...	117,527,361
General Administration ...	606,560	General Administration ...	6,036,168
Departments :		Departments :	
Political ...	284,000	Political ...	7,876,400
Interior ...	1,193,980	Interior ...	44,409,955
Justice and Police ...	2,602,500	Justice and Police ...	7,718,000
Military ...	389,285	Military ...	92,902,606
Finance and Customs ...	353,171,744	Finance and Customs ...	23,981,213
Commerce, Industry and Agriculture ...	2,183,100	Commerce, Industry and Agriculture ...	72,391,232
Posts and Railways ...	14,291,700	Posts and Railways ...	6,348,952
Miscellaneous ...	562,311	Miscellaneous ...	27,908,113
<b>Total ...</b>	<b>402,520,000</b>	<b>Total ...</b>	<b>407,180,000</b>

The organization of federal finance in Switzerland is out of accord with the doctrine of separateness. Not only does the confederate government share its revenues in certain respects, such as liquor monopoly and stamps, with the cantons, and make earmarked grants for purposes like education, but it receives a share in the cantonal collection of duties on military exemption, and is empowered to levy contributions on the cantons in proportion to their wealth and taxable capacity. The expenditure incurred in the cantons is relatively small and is met by levying all taxes not included in the federal schedule. It is noteworthy that all direct taxation of incomes was in Switzerland, as in the United States, reserved to the constituent states by the constitution, unlike the other federal governments where

**Rigid separation non-existent**

the tendency was to leave the central government constitutionally free to tap direct sources. At the present stage, however, this makes very little difference, as following upon the American federal income-tax of 1913, the Swiss Federal Government has since the commencement of the last World War embarked on schemes of direct taxation. Though this last inroad by Swiss federal authority in a field traditionally reserved for the states is provisional in form, it is not expected either that it will be abandoned or, having once been given up, will not be readily revived. When the Swiss Federal Government grants subventions to cantonal governments for general or specific purposes, detailed administration of the departments concerned is not interfered with by the central government, which at the most contents itself with issuing some fundamental regulations which have to be obeyed by the cantonal governments.

### THE UNITED STATES

The American constitution lays down that the Congress shall have power to levy and collect taxes, duties, imposts and excises, to pay the debt and provide for the common defence and general welfare of the United States. But all duties shall be uniform throughout the federation. The maintenance of the Posts is also a federal function. Direct taxes, other than those collected on the basis of population, were excluded from the field of federal finance till 1913, in which year the federal income-tax was introduced by means of a constitutional amendment. Export duties continue to be prohibited to the present day. The regulation of foreign commerce is also a federal function and all customs duties are collected by the federal government. • These are the

**Growing  
scope of  
federal  
taxation**

only constitutional provisions bearing on federal finance in the United States. In addition to the federal income-tax there is also an Estates Duty introduced by the federal government. The states governments mostly receive their incomes from land and property taxation, the corporation tax, the inheritance tax and the various licensing taxes. In many states (at present numbering thirteen) a separate income-tax is also levied. The need of a constitutional amendment to bring the income-tax within the province of the federal government is significant of the ever-increasing need for funds to meet the constantly growing scope of federal activities. The conception that the federal government exists only for defence and customs regulation is too much out of accord with the widening scope of modern national and international life. In the wake of increasing functions, the demand for funds has also increased, and no rigid restrictions on the principles of allocation of revenues can now be laid down. The component states also have in many cases to meet their growing needs by tapping the same sources as the federal government. The tradition of independent administration is so strong in the United States that even though several of the states and the federation levy income-taxes side by side, yet they maintain a separate organization for collection and assessment. This is peculiar to America, as in other countries where central and local governments tap the same source a joint organization has been generally found to be both convenient and economical. It might also be noted that since 1921 the budget system has been introduced in America, and an attempt is being made to regularize the finances and base them on a comprehensive and consistent policy.

The lack of financial co-ordination with a view to secure uniformity in assessment and efficiency in collection of

the various local and central sources of revenue, is the most outstanding feature of the present organization of American finances. So long as the land was blessed with unchecked material prosperity the evils of this disorganized condition were not generally noticed. The growing demands for state and federal services on the one hand and the falling off of the yield of the various state and federal sources on the other have latterly served to emphasize the need of a reform in the direction of centralization and co-ordination. It is felt that the evils of inefficient collection and double taxation can hardly be avoided otherwise. The practice of the federal government of making subventions to the states, particularly the backward ones, is recently on the increase. This tendency only helps to strengthen the administrative claims of the central government.

The following are figures of actual revenue and expenditure for the year 1930-31.

Revenue	Dollars	Expenditure	Dollars
Customs ...	378,354,005	<i>General Expenditure</i>	
Internal Revenue			
Income-tax ...	1,860,394,295	Legislative ...	23,978,413
Miscellaneous ...	569,386,721	Executive ...	506,811
Miscellaneous Receipts		Department of State ...	15,687,716
Proceeds on Government owned securities.		Treasury Department ..	204,569,134
Foreign obligations Principal ...	51,588,133	War Department ..	478,418,974
Interest ...	184,474,622	Navy Department ..	354,071,004

Revenue	Dollars	Expenditure	Dollars
Railroad securities ...	16,767,028	Interior Department ...	71,500,359
All others ...	11,558,914	Post Office ...	82,298
Trust Fund Receipts (reappropriated for investment) ...	61,159,058	Agriculture ...	296,865,945
Proceeds of sale of Surplus property ...	8,641,223	Commerce ...	61,477,118
Panama Canal tolls etc. ...	26,624,253	Labour ...	12,181,886
Other Miscellaneous revenue ...	148,285,242	Justice ...	44,333,498
		Independent bureaus and offices ...	49,969,046
		District of Columbia ...	47,798,066
		<i>Public Debt charges</i>	
		Sinking Fund ...	391,660,000
		Foreign Repayment ...	48,245,950
		Interest on public debt ...	611,559,704
		Postal deficit ...	145,643,613
		Panama Canal ...	9,299,057
		Veteran's Bureau ...	729,199,248
		Shipping Board...	331,961,996
		All others ...	688,240,503
Total ordinary receipts ...	3,217,233,494	Total expenditure charged to revenue ...	4,219,950,339



## GERMANY

In the category of exclusively central functions are included the monetary system, the customs, posts, telegraphs and telephones, poor relief, social insurance, and railways. The Reich may by legislation lay down fundamental principles governing the admissibility and mode of collection of state taxes in so far as they are requisite for protecting important social interests or for preventing (1) loss of revenue or injury to commercial interests of the Reich; (2) double taxation; (3) excessive charges on transport facilities; (4) hindrance to free movement of goods; and (5) bounties on exports. Customs and duties upon articles of consumption are administered by the authorities of the Reich. The ownership of railways is acquired by the Reich. The railway budget and accounts are incorporated with the general finances, but the conduct of the railways as a separate business is insisted upon by the constitution. The constitution further lays down that the Reich has legislative power as regards taxes and other revenues in so far as they are appropriated wholly or in part to its purposes. Should the Reich appropriate taxes hitherto appertaining to the various states, it must take into consideration the maintenance of the vitality of these states. The tendency of the financial provisions of the constitution is definitely in the direction of centralization. Taxes of the Reich are collected separately by officers of the Reich, and a separate Financial Court, the Reichsfinanzhof, is empowered to try cases arising out of tax laws. Co-ordination of financial organization is indeed a desideratum in the Germany of today, faced as it is with the colossal

**Centralized  
finance**

problem of reparations. Perhaps at a more normal and prosperous time, decentralization in the financial, as in the general administrative, field will be demanded by the states. For the present finance has been deliberately centralized, and extensive, almost plenary, legislative power in respect of taxation is vested by the constitution in the Government of the Reich.

Under the Empire the system of federal finance in Germany was ill-developed. The central government, which had immense political authority, had very small financial resources. Under the republican regime the position has been reversed. Not only are important heads of revenue reserved for the central government, but a general power of taxation is vested with it. Taxes on incomes, inheritance, land transfer and turnover are thus reserved, and these cannot be added to by provincial surcharges without the previous sanction of the federal government. A definite share of some of the centrally collected taxes is paid to the states, who in turn are expected to pass on part of their receipts to local bodies. To meet the requirements of national development, particularly in the smaller and backward states, the Reich makes specific grants which are earmarked for particular activities. The central government lays down certain conditions regarding the use of these grants and supervises their administration. Customs, excise and turnover taxes are exclusively at the disposal of the central government. Practically all the states have found it necessary to have an inheritance tax of their own in addition to a similar tax levied by the Reich. How to find adequate sources of income to finance the growing needs of both the common and several governments, is a question that had to be answered in most federations by admitting both the governments to a share in the

growing sources of revenue, with the exception of customs duties.

The budget estimates for 1930-31 give the principal items of revenue and expenditure as follows :

Revenue	Million marks	Expenditure	Million marks
Taxes ...	9,000		
Customs ...	1,266	Payments to states and communes.	3,578
Administrative Revenues ...	390	General Administrative expenses ...	2,729
Interest and amortization on railway bonds ...	660	Unemployment Relief ...	730
		War and Civil Pensions ..	1,748
Other Revenues ...	764	Internal charges arising out of war, occupation etc. ...	408
		Payment of bonds and reduction of debt ...	1,003
		Dawes Scheme ...	1,883
<b>Total ...</b>	<b>12,079</b>	<b>Total ...</b>	<b>12,079</b>

### CANADA

The sources of revenue allocated to the provinces are direct taxation within the province, public lands and forests, licenses for shops, taverns, saloons, and auctioneers. All the rest of the sources of revenue belong exclusively to the Dominion Government. Certain annual grants have to be made by the Dominion to the provinces. Land

**Financial  
allocation**

tax, forests, mines, game and fisheries are other sources of provincial income. In most of the provinces, inheritance taxes are also levied. Federal excise is levied mainly on spirits and tobacco, the provinces continuing to levy supplementary or licensing duties in these respects. With the introduction of the War Tax revenue, which is collected from banks, insurance companies, and other corporations, the income-tax and business profits tax, the sales tax, and stamp duties, the Dominion Government has adopted a policy of direct taxation which—though strictly constitutional—was not thought of as suitable for it by early statesmen and writers. The provinces receive very substantial subsidies from the Dominion Government, and they play a very important part in provincial finance. Some earmarked grants, such as those for road development, are also received by the provinces; and in general the administrative control that follows financial subvention is not inconsiderable. But there is an imminent need for co-ordination in respect of assessment and collection of many of the taxes that are availed of by both the governments. It is only in keeping with the requirements of a national minimum of social development that smaller and backward provinces such as British Columbia and Prince Edward Island receive special grants from the Dominion Government. A very unwelcome practice in the administration of public finances in Canada must here be noted. Local and factious expenditure is too often incurred with unjustifiable wastefulness, and then by direct and indirect methods is financed out of federal funds. This does not make either for sound finance or for efficient administration.

The following is a statement of the Consolidated Fund, that is, general revenue and expenditure :—

Revenue	1930-31 (Dollars)	Expenditure	1931-32 (estimates) (Dollars)
Customs ...	131,208,955	Public Debt Services and sinking fund ...	124,271,333
Excise ...	57,746,808	Civil Government.	13,031,771
Public Works including canals.	1,389,062	Pensions ...	52,420,351
Post Office ..	30,212,326	Defence ...	13,162,645
War Tax revenue.	107,320,635	Public Works ...	17,673,262
Various ...	21,709,515	Subsidies to provinces ...	12,744,201
		Pensions and National health.	13,151,210
		National Revenue.	14,806,361
		Post Office ...	36,339,975
		Other heads ...	70,208,057
<b>Total ...</b>	<b>349,587,299</b>	<b>Total ...</b>	<b>367,810,166</b>

## AUSTRALIA

The Australian constitution makes detailed provisions on the subject of finance. Most of these refer to administrative details and mutual adjustments.

**Constitutional provisions**

Customs and excise are specially declared to be Commonwealth sources. Temporary provisions for subventions to the various states are also made, and till 1910 assignments out of the proceeds of the customs were paid to the provinces. Though the Commonwealth Government levies the inheritance tax the state governments also continue to do so. The states, however, derive a

substantial part of their income, nearly one-half, from the proceeds of public utility services, such as railways, tramways, water supply, etc. The excise revenue also is tapped both by state and Commonwealth governments. The Commonwealth, like the central governments in all other federations, pays general and earmarked subsidies to the state governments.

The virtual existence of a concurrent power of taxation in the Commonwealth and state governments leads to disorganization in financial administration. This evil can be checked only by establishing some form of a co-ordinating financial agency, which step would, however, too violently offend the feelings of independence cherished by many, though not all, of the constituent states. The Commonwealth Government pays to all states specific grants for earmarked purposes, such as combating venereal diseases, and backward states like Tasmania and Western Australia receive special subsidies for their development.

Another peculiar feature about Australian federal finances is the constitution of a National Loan Council consisting of representatives both of the state and Commonwealth governments. This body negotiates loans on behalf of all the states and the Commonwealth Government. The responsibility for all loans is thus national, and naturally the federal government has the necessary powers to secure the repayment of loans contracted by a state. The recent happenings in Australia have made this point abundantly clear. It will be recalled that one of the influences leading to Australian federalism was the prospect of enhancement of foreign credit. The Commonwealth Government grants from time to time subventions to the state governments to enable the latter to bear the debt charges.

The following are figures of the revenue and expenditure account for 1930-31.

Revenue	Pounds	Expenditure	Pounds
Customs ...	18,224,227	War and Repatriation ...	29,506,218
Excise ...	10,070,846	Invalid and old age pensions ...	11,710,953
Land Tax ...	2,758,598	Maternity Allowances ...	630,652
Probate and Succession duties ...	2,068,865	Posts and Telegraphs ...	12,994,870
Income-tax ...	13,604,374	Payments to States	11,112,615
Entertainments	186,661	Federal aid, Roads.	2,000,000
Posts, Telegraphs and telephones.	12,839,104	Other heads ...	12,369,231
Sales tax ...	3,472,854		
All other ...	9,814,245		
<b>Total ...</b>	<b>69,566,920</b>	<b>Total ...</b>	<b>80,324,539</b>

Taxation is pre-eminently an economic operation and its working in federal states has yielded interesting reactions on the administrative side. The requirement that the state and federal governments should have, as far as possible, separate fields of governmental activity and financial resource has been rendered non-existent by the growing economic integration in all federations. The prejudice against the centralizing influences of a co-ordinated system of finance have not as yet vanished. But experience indicates that the establishment of some form of financial centralization both for assessment and collection is essential in the case of many sources of revenue, particularly so if they are tapped both by the central and local governments. Such a development would, of course, reduce the importance of the administrative exclusiveness of states that was such a valued possession of the constituents in a federation till now. The experience of all

federations, and particularly of the United States, is very instructive in this respect. The federal government there is being called upon to undertake a much more positive and wider range of administrative functions than was chalked out for it by the framers of the American constitution. For a present-day observer of American life, therefore, the financial arrangements in that country appear to be peculiarly inadequate, particularly in respect of the regularization and co-ordination of state and federal finances. Another very interesting development in all the federations is the system of subventions. Their use is steadily on the increase. These are granted either for the general purposes of the states or for certain earmarked activities. Backward and smaller states get special grants to help them to maintain their administration at the minimum level of efficiency. The degree to which in all these cases of federal subsidies the administrative control of the federal government is entertained, varies from state to state. But an unmistakable tendency towards an increase of central influence over state administrations, on account of the latter's financial dependence on the former, is visible. On the other hand there are no instances to show that in normal times it is expected that the state governments will make any contributions to the central government out of their revenue. An attempt continues to be made to ensure that each government should possess sources of revenue which are appropriate to its functions, but wherever such an arrangement fails to secure either efficiency or adequacy there is an unmistakable urge towards centralization and joint sharing. The old idea about direct taxes being suitable to state governments and indirect to the federal government has long ceased to fit the financial and administrative conditions in federal states.



## CHAPTER XI

### THE FUTURE OF FEDERALISM

CONSIDERING the trend of the evolution of political institutions up to now, any claim that there is a continuous or a universal urge towards federalism can hardly be justified. Most divergent tendencies of political development are found at work at one and the same time.

**Prospects  
of feder-  
alism**

While in some countries the tendency of political evolution may be definitely federal, in others centralizing movements are gathering weight.

Even in a federation the existence of centralizing tendencies for some of the units is not ruled out. The formation of a new state as a result of the union of a few smaller states in Central Germany and the very recent movement towards the union of three smaller Canadian provinces are significant in this respect. The needs of different countries at different times vary from one another. But only a confirmed pessimist can deny that not only in the political, but in many other fields of social organization the principle of federation has proved itself so potent a solvent of the numerous yet unavoidable local and narrower differences, that a further substantial extension of areas under federal government may well be looked for. So also it would be misreading the essentially oscillating movement of human civilization to read in the political history of the world during the last dozen years an unmitigated or a final success for unthinking and exclusive nationalism. The Treaty of Versailles so energetically emphasized the validity of the

smaller nations' claim for independence and professed to uphold it with such a strong international organization as the League then claimed to be, that it was only to be expected that these newly created states should be jealous of their cherished sovereignty and should attempt to put it to all kinds of traditional tests, if only to prove its genuineness. So far as the major states who were instrumental in framing the Treaty of Versailles are concerned, several relevant factors must be impartially and carefully considered before deducing conclusions from their conduct. The defection of the United States, which nation more than any other was responsible for the recognition of nationalities and for the setting up of an international organization, shook the faith of the other nations, and in particular of France, in the potency of the League ideal. Judging the position of France in the light of the history of its relations with other European nations it can be excused the panicky behaviour of which it has undoubtedly been guilty: the defection or surliness of one nation gives ground for others to follow its example. Moreover the respect for nationality shown by the Treaty of Versailles even to the smaller states, was conspicuously and deliberately withheld in respect of the relations between Austria and Germany, and those between the Imperialist powers and their dependencies. A war which was avowedly waged to end war, closed with a settlement which placed on a proud German nation the indignity of the war guilt and an unbearable burden of reparations. These are some of the imperfections of the peace treaty which serve to explain the recent swing of the pendulum in the direction away from internationalism. But if a long view of historical movements were taken it would appear that, even out of the experience of the years that are immediately ahead, a reaction is likely to set in.

How long it will take for this reaction to start and what new disasters are in store for the world's statesmen as their taskmasters it would be futile to contemplate.

The course of federal evolution indicates that in the past the need of forming wider units for purposes of defence and economic exchange has promoted the cause of federalism. In the world of today there are unmistakable signs that on both these counts the need for a widening of the limits of political allegiance is overwhelming. Defence is secured either by forming stronger unions to fight another nation or by combining isolated states into a wider organization under a common authority, so that the conflicts of interests which lead to war may be minimized, and in case such disagreements develop they may be treated by methods of peaceful arbitration. Some people trace in the post-War pacts and unions among states merely a repetition of the old principle of balance of power. But there is an important difference between the treaties of alliance before the World War, and the pacts for the prevention of armed conflict that have followed it. The latter are not only definite steps in the direction of peaceful international intercourse, but they entail a tacit, though faint, recognition of some of the limitations of aggressive nationalism. To the extent to which ideas of exclusive national sovereignty will be replaced by the urge towards concerted effort among nations for living a peaceful life of mutual regulation and adjustment, to that extent the path leading towards a wider statehood than the nation will be smoothed. Such a unit, if and when it arises, must necessarily take the form of a federation. • The League of Nations may not possess today that sanction behind

Security  
and  
progress

its actions which alone can make it a nucleus of a World Confederation. A long educative process is necessary to convince the powerful states of the world that in recognizing a common world authority in matters vitally affecting the whole of mankind, they would only be strengthening their own chances of peaceful and continued progress. The Great War did something to impress this lesson on the belligerent nations, and the present world crisis is working in the same direction. Alongside of a readiness to submit the differences and needs of individual nations to the impartial and collective judgment of the world, there must also emerge a willing acquiescence in the equal rights of nationalities, large and small. If the rule of law is the essential feature of constitutionalism in a national government, it is equally essential in a world organization. Recent events in all countries are tending towards emphasizing the need, though not the readiness, for a greater realization of these truths on the part of nations. For the prevention, postponement, or at least the regulation of armed conflict between nations, if for nothing more, the development of an extra-national governmental organization has become a desideratum.

The tariff wars that have gone on unchecked among the nations of the world for nearly a century have also been found to be short-sighted, and from the standpoint of humanity at large, they are nothing less than suicidal measures, which only help to bolster up all kinds of unremunerative employments, and thus to reduce rather than to enhance a nation's productive capacity. So long, however, as the spirit of national exclusiveness and aggrandisement is abroad it is inevitable that every state should think in terms of the nation,

**Tariff  
wars**

and should so adjust its economic policy as to put itself in as strong a position as possible, in an offensive or defensive war. Economic forces have, in spite of the tariffs, worked towards establishing an international economic order so sensitive that the slightest disturbance of the balance in any country has its repercussions in all others. The present slump illustrates this interdependence in the economic sphere as the War did in the field of defence. It is now realized, or in any case it should have been by now realized, that no one nation can indefinitely go on artificially working the balance of international trade in its favour without provoking counter-acting forces within and without the country. The movement for establishing a United States of Europe is motivated no doubt by many political considerations, but it has also received the blessings of many European politicians and business men because of their impatience at the dozens of tariff walls now raised on the continent. As international association for the prevention of war will have to be based on a recognition of the equal and just rights of all nations, so also the widening of the limits of free exchange must be accompanied by a recognition of the interests of various industrial units which must be justly co-ordinated in the Union. This, in fact, is the peculiar potency of the federal principle, namely to reconcile the claims of wider unity with those of local identity and liberty. Though the process of economic and military conviction may be delayed yet for a while, and according to some for a long while, there is little doubt but that the society of the future both for peace and prosperity must be organized in a unit wider than the nation, and that the form of this organization must be federal and democratic.

It is indeed an open question as to whether the form

of parliamentary government, as it works in Great Britain, can be safely prescribed for all communities and all times. But that, barring extraordinary times, the only form of government in which the rights of individuals and minorities, as also the peace of the people, could be most assuredly maintained is the democratic form, cannot be gainsaid. On the one hand, therefore, states formerly independent but combining for military and economic reasons, are persuaded to form a federation : this is borne out by the evolution of most of the modern federations. So also big states under a despotic administration, when they attempt to realize the ends of democracy while retaining the advantages of national unity, find it essential to reorganize on a federal basis : recent tendencies in India, China and Spain are very illuminating instances in point. That even the more manageable and traditionally unitary states, like Great Britain, are not immune from this tendency is suggested by a proposal formerly made that England, Scotland, Wales and Ireland, should be formed by a process of devolution into constituent states of a federation, for which the King in Parliament should be the supreme authority. The traditions of the supremacy of Parliament, and the Imperial character of the Assembly at Westminster then led to the proposal being brushed aside. As the different parts of the Empire attain majority and independence, it may be necessary, if the Empire is not to crumble through the passivity of the Home administration, to reconsider the proposal for a dual federation, one amongst the various parts of the United Kingdom and another for the whole 'Commonwealth of Nations in the British Empire'. It is thus apparent that the needs of defence, commerce, liberty

and unity will make for an expansion of the area under federalism.

The example of Russia and to a smaller extent of Germany would suggest at least one direction in which

**Limitations of geographical representation** the federal structure may be varied from the traditional territorial model. Vocational rather than regional representation in controlling authorities may find more and more favour with the constitution-maker of the future. The chances, to be honest, of a very extensive adoption of this principle in the strictly political field seem to be very limited. Yet in the sphere where the principle may be adopted, its organization will necessarily have to be federal. As in the industrial sphere there is an allegiance that transgresses regional unity, so also in many other respects of a cultural, social and economic significance, the nation is found to be too small and inappropriate a unit for the affinities of civilized men. This indeed is the most arresting fact while considering the future of federalism. If it is the purpose of a political organization to express the sense of social unity felt by the people, then certainly in a very important sphere the world has outgrown the nation state. In industry as in thought and culture many of our interests transcend the bounds of the national state. It is, therefore, inevitable that the process of political evolution beginning in the tribal and the village state should now bid fair to reach its further stages on the road to a world state. As, however, the only conceivable form of government for a civilized world is a democratic one this extension of state-life cannot take effect by the process of absorption. Wider unity will have to be reconciled with the needs of national and state liberty, and this can only be done by adoption of the principle of federalism.

If, therefore, it were a safe prophecy that the principle of federalism would continue to make fresh conquests in the future, it is by no means clear as to what particular structure would be found most suitable for the furtherance of those objects for which a federation is most to be desired, security, prosperity and cultural progress. With respect to the executive it is a matter of choice between the parliamentary and the presidential forms. Though the experience of Canada and Australia is not positively discouraging, there is reason to believe that the need of stability and strength in a federal form of government is so crucial that the removable executive which is the essential feature in a parliamentary government will be found to be generally unsuited. The German experiment of putting at the head a stable President elected directly by the people and vesting all administrative responsibility in a parliamentary ministry which holds office so long as the legislature does not formally withdraw its confidence is one—but as has already been shown not a very satisfactory—attempt to secure the desired end. Forecasts in a matter that is mostly the outcome of historical and local conditions would be futile. But it is fairly certain that some modification of the parliamentary type in the direction of greater stability and continuity will be found to be the most suitable executive for a federation. That a presidential executive is not an unmixed good has already been explained in an earlier chapter. The legislature must be organically associated with the executive administration. But whether in any particular case this end would be secured by the normal parliamentary method of a removable executive or by the Swiss method of a college elected by the legislature for a fixed period;

**Some stability  
in the federal  
executive  
essential**



or in some other form, is more than we can say at present.

With reference to the legislative organization in a federation it is necessary to refer specially to the so-called federal or upper chamber. In the United States of America, the Senate has been established by the historical necessity of reconciling the divergent viewpoints of the smaller states which claimed equality in a unicameral legislature, and the bigger states which claimed proportionate representation. In their present working, however, the upper chambers in federal constitutions have not proved their utility beyond a doubt, particularly as 'federal' chambers. The Canadian Senate which is wholly nominated, the Australian Senate which is elected by the same electorate as the lower chamber, the Swiss Council of States which has no uniform basis of composition at all, and the German Reichsrat which is anything but a legislature—all these indicate that the so-called federal house in a legislature has no indispensable role to play in a federation, no role which, if at all it is essential, cannot be played by a normal second chamber. Where the emergence of a federation has been preceded by a good deal of jealousy and mutual suspicion among the constituent states, particularly if they are of a very unequal size, the inclusion of a chamber in the central legislature based on the principle of state equality, and its being given particular functions with regard to the special interests of the states, may become inevitable. In those cases, however, where the course of federal evolution is smoother, there is no reason why a second chamber should deliberately be created on the principle

**Second  
chambers  
and equal  
state  
representa-  
tion in  
them not un-  
avoidable**

only of equal state representation. If one is considered necessary, it may at least be composed on a more rational and useful principle than the dead equality of states. For instance, special interests of an industrial and economic character may be represented in that house along with other general constituencies. It is only intended to point out that there is no reason why necessarily there should be a second chamber in a federation, or, granting that there is one, why it should necessarily be based on the principle of state equality. Where federations result from a process of devolution, the significance of these remarks will be all the more obvious.

In the case of a federation resulting from a process of decentralization another important consequence follows.

**Residuary powers naturally vest in federal government in the case of federations resulting from decentralization**

In the historically prominent type of federations, a condition of separate state existence has preceded that of unified state life. In such a case it is in keeping with the course of federal evolution that the residuary powers should remain with that part of the double machinery of government which enjoyed, before the emergence of the dual authority, all the functions of the state. This is only natural as the elements of stability and continuity in such federations is supplied by the several states and not by the new national governments, as is the case in the other type of federal process, namely, that of decentralization. On this account it is not proper to assert that a composite state in which residuary powers vest in the central government, is less federal than another in which these powers are vested in the constituent states. This distinction is purely a historical accident, and is immaterial as to the essence of a federal state, namely, the existence of a dual system of

governmental organization to attend to two separate fields of administration. In future, therefore, as cases of federations by devolution multiply, the prejudice in favour of the constituent states' claim to residuary powers will vanish. On the other hand, the growing strength of the centripetal tendencies in a federation even of the old type may help to correct the attitude of jealousy towards the central government which is so common among observers of federal governments. In proportion as the common sovereignty of the citizens over both the central and state governments is realized, the ideas of 'a pact' and 'reserve of powers with the states' will recede into the background.

In the field of judicial administration it is hardly to be expected that the American model of a parallel system of courts will now commend itself to federal reformers. An attempt will naturally be made to adopt existing institutions to fresh needs. This would indicate the prevalence of the system of courts of mixed (federal and state) jurisdiction. The tendency of the centralization of law is, however, bound to grow, and naturally some regulation of state judiciaries by the national government is only to be expected. Over and above the state courts being empowered to try cases under federal law, special federal courts for specific cases, for appeals both under state and federal law, and for constitutional disputes are also bound to increase. In other words neither the Swiss nor the American, but the Australian model of judicial organization is most suited to a majority of federations. The subject of administrative law no longer attracts the same attention from constitutional critics which it did a few years ago. There is a twofold

**Joint judiciary and expansion of administrative courts**

explanation for this change of attitude. On the one hand in countries like France, where the administrative departments have the special privilege of being judged, in respect of complaints against them, by a tribunal composed mostly of departmental officers, the procedure in such litigation is more and more regularized, and the citizens today have little fault to find with that system. On the other hand, in those countries like the United Kingdom, the United States, and the countries of the British Empire, where the common rule of the law prevails for all, officials and non-officials, a very powerful recent tendency in the contrary direction is working. In an increasing number of cases the legislatures of these countries content themselves with passing general legislation creating rights and obligations for the citizens. But the framing of the by-laws and the administration of both the law and the by-law in particular cases is left exclusively in the hands of the officials without even an appeal to the ordinary courts. Thus executive departments are being saddled with quasi-legislative and quasi-judicial functions, which tendency, howsoever deplorable on theoretical grounds, has to be accepted as inevitable so long as one all-powerful legislature takes upon itself the task of legislating for all citizens in all matters. It is, however, possible that an enlightened democracy may rebel against this usurpation of legislative and judicial powers by the executive. In that case a remedy will have to be found in the direction of a federal reorganization of modern states into manageable units, where the citizens may be persuaded to take a more positive and sustained interest in the working of public bodies. So long, however, as this tendency towards concentration and multiplication of legislative activity continues either in a unitary or in a federal state, administrative courts, like administrative

legislation, are likely to multiply, though departmental non-official councils and final appeals to a judicial tribunal may with advantage be provided for.

With respect to the civic rights of citizens in a federal state, it is now common that<sup>11</sup> citizens of one state enjoy, in all the rest, **Civic rights** rights of citizenship conferred by that state upon its own subjects. Federal citizenship is, of course, necessarily uniform and is not affected by the movements of citizens from state to state. As immigration and emigration are under federal regulation and as naturalization involves issues of external relations, this is rightly left to the federal government. But the conferment of political rights on naturalized aliens in some federations is still in practice the function of local authorities, of communes in the case of Switzerland. This is really not the best of arrangements as it makes for a lack of uniformity and continuity. It is best that naturalization and conferment of rights of citizenship, civic and political, should be uniformly regulated by federal authority, as is mostly the case in the United States. Thus though at the inception of a federation composed of formerly independent states citizenship would be primarily a state citizenship, after the federation has come into being there should be only one citizenship, that conferred by federal authority, which should include the rights of citizenship in the state in which the person for the time being resides.

Most modern constitutions, unitary as well as federal, are 'written' and some extraordinary procedure whereby to amend them is provided. In a federation the prevalence of both these characteristics, a written and a rigid constitution, is universal. But it is to be noted that the difference in these respects between a unitary

and a federal state is only one of degree. In the federal states as much as, if not more than, in the unitary states, a large mass of usages and extra constitutional practices are arising which have almost the same validity as the written word of the constitution. The rigidity of the constitution also varies from state to state, and in the case of Germany the normal legislature with an extraordinary procedure is competent to amend the constitution on which the mutual relations between the states and the federation depend. It must, however, be conceded that whatever provision a federal constitution may make for its amendment, it must be such as to give a reasonable assurance of security of their rights to the constituent states. Extraordinary provisions, a separate constitution-amending body, or a specially stiff procedure for a normal legislature while engaged in its constitutional functions, or an appeal to the people at large, are indicated as suitable methods to achieve this end. The particular circumstances attendant on federal evolution in every country determine the actual adoption of one or another of these practices. Any assertion on this point, except that some extraordinary provision which would secure the states from a too easy encroachment on their field either by the federal government or by some other authority is indispensable in a federal constitution, cannot be made. The course of federal evolution and the forms of federal structure have assumed diverse shapes in tune with particular conditions and requirements. Too severely exclusive and dogmatic lines of division seem to be unjustified in the light of the study of the various federations attempted in this book. But certain fundamental requirements of a federation and probable lines of progress, have

been indicated, in the course of our treatment of the subject. For making the real ideals of self-rule workable in an ever-widening unit of political existence, and for securing the largest possible opportunity for peaceful co-operation with our fellow-beings, an intensive and extensive development of the federal form is the only conceivable and desirable remedy.

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