

THE REVISION OF THE CONSTITUTION

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*"As it is the interest of government that reformation
should be early, it is the interest of a people that it
should be temperate"—BURKE.*

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PREFACE.

THE papers on constitutional reform in India that are now offered to the public were first published in the periodical called the *Week*. The bulk of them were written when the writer belonged to the class of persons known in Indian political jargon as non-officials—a word, which it may be noted in passing, in itself summarises the history of political development in India, for, in Indian government there were officials first and then came the others. To those who were familiar with the writer's political views when he was a non-official, his present views will seem to have changed neither in colour nor in body as a result of his entry into the official service of the State. And, if it did not very closely appear like a private disclaiming responsibility for the views of his general, I should not labour the point that Government are not responsible for anything in this book, except for permission to publish. The only excuse for the publication of this book is that it may make some contribution, however slender, to the constitutional and political debate that is now proceeding in India and will later on be continued in England. And, although not one of its ideas may be built into the fabric of the constitutional edifice of India, it will have served some purpose, even if it was one of the stones which the builders took up but had to refuse.

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THE AUTHOR.

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I

The Method of Revision.

According to section 84-A of the Government of India Act "the Secretary of State for India shall submit to Parliament for the approval of His Majesty the names of persons who shall act as a Commission for the purpose of an inquiry into the working of the system of Government, the growth of education and the development of representative institutions in British India and matters connected therewith and the Commission shall report as to whether and to what extent it is desirable to establish the principle of responsible Government and to extend, modify, or restrict the task of responsible Government then existing therein." According to the Act therefore the Commission of inquiry is to be sent out only in 1929. The speculation that was rife during last year as to the probable date and personnel of the Statutory Commission has now been laid at rest by the announcement of the Secretary of State in England and of the Viceroy in India, that the Commission would come out early in 1928. This announcement was certainly contrary to expectations as the communal troubles of last year converted the popular hope that the Commission should come earlier than 1929 into the general fear lest it come earlier than it need. The question

now is as to the kind of reception the Statutory Commission whose personnel is known will have in this country. But whether in spite of the Viceroy's efforts to win a friendly reception for the Commission from the leaders of the various political parties in the country, the decision of important political organisations in favour of a boycott of the Commission continues or not, the fact remains that it is only by means of a Statutory Commission and by an Act of the English Parliament based upon the report of that Commission that the present constitution of India can be revised. Other modes of revision have been suggested. The President of the Indian National Congress for the last year and other political leaders have suggested that a convention should be called of the elected representatives of the Central and Provincial legislatures and that this convention should frame the future constitution of India. A Round Table Conference of representatives of Government and of political leaders has also been put forward as a method of revising the constitution. Apart from the fact that these alternative methods are excluded by the Government of India Act, the facts and circumstances of present-day India are against a resort to any such expedient. Supposing, that England freely and generously, without any *arrière pensée* gave India the right to frame its own constitution, India would be well advised in her present state to decline the privilege.

The constitution framed by Indians would have to be an agreed constitution—agreed to by all parties and communities. It would be flying in the face of facts to hope for any such consummation in the present political atmosphere of the country. An agreed constitution would require such a degree of national unity as does not obtain at present. The President of the Indian National Congress may assert the right of the Indian nation to determine its own system of government. But if this right is to be realised in fact there must be a nation made and not merely in the making. Self-determination is all very well, but there must be a self to determine. A self, disunited and incapable of mastery, cannot determine its destiny. Before the people of India can agree to the making of a constitution, they must have learnt to agree on many other things. National Conventions and Round Table Conferences are ruled out by the circumstances of India. This is not mere argument. It is proved by the recent history of party tactics in the Indian Legislature. Time and again a member of one or other of the nationalist parties in the Indian Legislative Assembly has given notice of a resolution that would enable the formulation of a constitution for India by representatives of the people, only to find himself stalemated by some Mussalman member or other tabling an amendment safe-guarding some special communal rights or

liberties. And time and again the resolution has been withdrawn. The recent failure of the All Parties Congress held in Bombay in May last to take up common ground hardly encourages one to hope for success. Confronted by somewhat similar circumstances in France in 1815 Chateaubriand was forced into the famous declaration *Hors la charte, point de salut*. And we in this country will be simply courting disaster if we go outside the Government of India Act, preamble and all. We shall be abandoning a chartered course for one beset by shoals and dangerous currents. Both the Government of India Act and the circumstances of India require that the future constitution shall be granted by the Parliament of Great Britain on the report of a Statutory Commission. Nor is there anything galling to the self-respect of India in getting its constitution in this wise. Not to speak of the free constitutions that have been granted by wise Kings to their peoples on the continent of Europe, all the self-governing dominions of the British Empire have received their constitutions from England by the favour of the English Parliament. Canada and South Africa, New Zealand and Australia have received their constitutions in the manner in which India has received hers. After all it is not the manner in which the gift of free Government is conveyed to a people but the quality of that free government that is the thing that matters.

A Statutory inquiry being the only possible method of revising the constitution, the first important question that has to be dealt with is that of its personnel. All the speculation and kite-flying in regard to the personnel ended with the publication of the names of the members of the Statutory Commission. The Commission is a purely British Parliamentary Commission. The idea of such a Commission when it was put forward early last year was condemned generally by Indian opinion. I must confess that this opposition to a purely British Parliamentary Commission leaves me cold. After all Commissions cannot frame their decisions in the teeth of the evidence that is laid before them. A Commission, however, from which Indians were excluded may find a hostile atmosphere meeting it and that would be disastrous to its work. That is the only valid argument against the exclusion of Indians from the Commission. On the other hand the inclusion of prominent party politicians who were already committed to this or that solution of the Indian constitutional problem would breed a number of minutes of dissent. The needs of the case would perhaps have been met by the appointment of a Commission of Englishmen and Indians of high political education and wide political experience wedded to no party theory, open to conviction by evidence but possessed of the statesman's imagination which would see great

things for the country over whose political destiny they are called upon to preside. But in regard to such matters one alternative is as good as another, for the one has merits which the other does not possess.

A British Parliamentary Commission indeed has merits of its own. It would come imbued with the tradition of English Parliamentary development. It would start with a prejudice in favour of parliamentary government. And that ought to count for something in the minds of those critics who are afraid that the Statutory Commission might go back upon the system of English parliamentary government the foundations of which have already been laid. It must be counted unto Lord Birkenhead's righteousness that tired English officials and reactionary Indian *Jo-hookums* have not been appointed. It is also an advantage that most members of the Commission are not known to possess any special knowledge of India or of Indian politics. Their minds would form a *tabula rasa* upon which the evidence and principles may write their conclusions without let or hindrance from prejudice or passion. And the back bench mind is more receptive than that of the front bench. And if Committees of Indian Legislatures could be so organized as to be acceptable both to Indian political opinion and to the British Parliament, the best way out may be found from the present position. Any way nothing should

be done to prolong the postponement of the work of the revision of the constitution. Anyone who knows the *impasse* to which political life in this country has come would like it to be ended at the cost of everything but honour and the good of the country. But after all it is not so much the personnel of the Commission that will determine the success of its labours. This no doubt will have much to do with it. But rather it is the spirit in which the Commission sets to work that will determine the quality of its conclusions. It is the political philosophy that will form the inspiration of its inquiry, it is the ideals and objects which it will place before itself that will determine the excellence of the service it will render to the country whose political future it has been called upon to a large extent to determine.

II

The Principles of Revision.

The section 84-A of the Government of India Act of 1919 that determines the method of revision also dictates the principles that ought to govern the revision of the constitution of India. The Statutory Commission, it lays down, is "to enquire into the working of the system of government, the growth of education and the development of representative institutions in British India, and matters connected therewith; and it shall report as to whether and to what extent it is desirable to establish the principle of responsible government or to extend, modify or restrict the degree of responsible government then existing, therein including the question 'whether the establishment of second chambers of the local legislature is or is not desirable.'" It must be confessed that the drafting of this section reflects little credit on either the authors of the Bill or its draftsmen. For one thing it jumbles together the general and the particular. However important the question of second chambers may be, it has no right to be raised to the dignity of being singled out for special mention to the exclusion of quite as important, if not more important, institutions of

parliamentary government. The growth of education is, no doubt, a condition precedent to political progress but the growth of national unity and the increase of social reform are just as necessary for constitutional advance. But there is a more considerable objection. In one part the section flatly contradicts whole sections of other parts of the Act. The Commission is to report as to whether and to what extent it is desirable to establish the principle of responsible government. One would think that the preamble and the sections of the Act which confer some measure of responsible government in the provinces had already decided this question and the only question for the Commission was to enquire and report to what further extent it was desirable to extend the principle of responsible government. In fact, later words of the section make nonsense of the words referred to just now. For the Commission is to enquire "whether it is desirable to establish the principle of responsible government or to extend, modify, or restrict the degree of responsible government then existing therein." One cannot examine whether a reform is desirable or not and at the same time enquire whether some benefits already accruing under it should be extended or restricted.

The real mischief, however, of this section is in the words "*or modify or restrict*" the degree of responsible government already established. These words contemplate the possibility of even the limited

measure of responsible government so far given being reduced. The mischief of these words lies in the fact that it is opposed to the whole spirit and intention of the Government of India Act. The preamble of the Government of India Act declares that it is the policy of Parliament to provide for "the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in British India." A more positive and unambiguous declaration of policy could not have been made by Parliament. There is no doubt about the policy of Parliament in regard to India. That policy is not to consider or experiment on the advisability of introducing self-governing institutions in the country. Nor is there any question of seeing whether the realisation of responsible government would conduce to the good of India. These questions have been answered once for all by the Government of India Act. That answer stands till another Act of Parliament reverses that decision. It is true that the last but two paragraphs of the preamble say "that the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunity of service will be conferred and the extent to which it is found that confidence can be reposed in their sense of responsibility." But this part of the preamble only qualifies, it cannot destroy the earlier and therefore more essential part of the preamble. It

only lays down one of the conditions of further advance. It cannot be interpreted to warrant a retreat from the advance already made. The conclusions of the Commission on this portion of its enquiry will be one of the many considerations which Parliament will have to take into account when it formulates the changes to be made in the constitution. These conclusions can never be the sole determining consideration. The policy of conferring free government in India cannot be questioned. What is open to question or experiment is the method and means of "gradually developing self-governing institutions and of progressively realising responsible government." But about the goal and objective of British policy in India there can be no manner of doubt.

It is true the preamble of an Act is not an essential part of an Act. But as Story, the American Blackstone, says "it is an admitted maxim that the preamble of a statute is a key to open the mind of the makers, as to the mischiefs which are to be remedied and the objects which are to be accomplished by the provisions of the statute." It is true that "the preamble of an Act can never confer any power *per se*"; it can never assent by implication to an enlargement of any power expressly given. "Its true office is" no doubt "to expound the nature and extent and application of the power actually conferred by an Act and not substantively to create."

The view that I am pressing forward now in regard to the preamble to the Government of India Act is sanctioned by the principles laid down by great constitutional lawyers like Story in regard to the interpretation of preambles. No plea is put forward to get out of the Government of India Act by means of the preamble more than the Government of India Act gives. But what I urge is that the preamble will not allow one section of the Government of India Act to contemplate the possibility of any measure of responsible self-government granted by the Act as a whole being reduced to any extent whatever. Although the preamble of an Act cannot grant more than the Act itself gives, the preamble ought to prevent the declared intention of the legislature being rejected or thwarted. I am not taking legal objection to a narrow and illiberal interpretation of section 84-A of the Act. For, in a court of law a section will prevail against the preamble of an Act. But I am appealing to the Statutory Commission as a body of statesmen to take their stand on the preamble and to perform the duty laid upon them in a liberal and generous spirit. The Commission may modify, or change the present institutions and constitutional arrangements, whereby the objective of responsible self-government is to be reached. It may lay out new roads by which India shall travel to free self-government. It may alter the means but it cannot propose another end. Many things the Commission may

suggest, but one thing it cannot suggest and that is to say that the development of self-governing institutions and the attainment of responsible government may not be the objective of Indian policy.

Not only the preamble to the Government of India Act but other solemn utterances made by British statesmen may be adduced to prove the intentions of British policy towards India. The preamble in fact is an embodiment in statute form of the famous declaration made by the Secretary of State in Parliament on the 20th August 1917 "of the policy of His Majesty's Government with which the Government of India were in complete accord." Again the King-Emperor in his Royal Proclamation issued soon after the passing of the Government of India Act declared *urbi et orbi* that the Act "pointed to full responsible government hereafter". And the statesmen who committed their respective governments to a policy of reform in the direction of responsible self-government, the late Mr. Montagu and Lord Chelmsford, gave expression to the hope in their famous report that "they wish to attain complete responsibility where we can and as early as we can." Lord Birkenhead in his speech on Indian affairs in the House of Lords on the 7th July said that "the words of the preamble expressed the deliberate and deeply considered decision of Parliament." If therefore the intentions of the

Parliament who passed the Government of India Act, if the mind of the statesmen who persuaded the Parliament to pass that Act, if the preamble of the Act is to have any say in the matter, section 84-A of the Government of India Act must be taken to imply that the Statutory Commission will have to implement by ways and means dictated by the evidence the objective of responsible self-government. Any retrocession of the advance made, any recoil from the positions taken would be against the whole spirit of the Act. The words that contemplate the restriction of the degree of responsible government must be taken as a sop to that timorousness which assails all but the greatest statesmen when any great change is on the threshold of being.

Fastening on the words that contemplate restriction of the measure of responsible government already granted by the Act a school of political critics both in India and in England have of late been urging the view that the Statutory Commission should come out to India with a fiercely critical attitude towards the Indian political situation. The most direct form of this view is that the Commission should institute a judicial enquiry into the working of the present system of government and to decide on the evidence of the facts and circumstances of the India they will visit whether a further advance in the direction of responsible self-government is justifiable or a retreat would have to be

ordered. We have seen how little this view answers to the spirit of the principles and ideas of reform which directed the inauguration of the present system of government. Opposed to this view is the other idea that the mission and duty of the Commission is to devise the best ways and means of realising the ideal of responsible self-government which is the goal of India's policy. For purposes of shorthand reference I would call the first view, the merely administrative view and the latter the educative view of reform. These terms have been used to distinguish the radically different ideas and methods of reform which they would describe. The purely administrative view starts from the point that systems of government are to be judged only by the extent to which they realise the most necessary ends of government, for good government is the only end of government and efficiency is the only test of government. The other view, the educative view, while not denying that the end of government is good government and that any government worth the name must be efficient, refuses to accept the conclusion that systems of government are to be judged only by results. It looks to the means and not merely to the end of government. It looks upon government as a means of education for the people governed, not merely as a thing to be obeyed and feared by the people. While it does not deny efficiency and good results as the end of government it fears that efficiency may be

procured at the expense of the self-reliance and manly freedom of the people. It looks upon government not merely as a machine for the production of results but as a school for political education. It looks upon government as an institution for the training of the people in the art of self-government. If efficiency and results suffer as a result of the devolution of governmental power into the hands of the people, it is not an eventuality to be feared and avoided at all costs, for the inefficiency will be only temporary and in the long run will cease with the increasing education of the people in the art of government. The institutions of government according to this view are to serve the purpose of a gymnasium for the strengthening of the political muscles of a people and for adding to its political stature. Government, according to this view, is a school of freedom and not a mere factory of efficiency.

Of these two views there can be no doubt which is the truer and the more political view and the one to be adopted by the Statutory Commission as the philosophical background of its enquiry. If efficiency and good results were the sole end of Indian government the Government of India Act need not have been passed and the Statutory Commission need not come. For it can be proved without its help that the devolution of power on the people and on authorities responsible to the people has resulted

in a loss of efficiency, in a lowering of the standards of administration as it has in every other part of the world where political power has been devolved on a people not used to the exercise of it. Any one who has come into contact with the administration of local bodies in India knows that roads are not as well kept, that district board contractors are not as controlled, that Municipal Councils are not as free from factions as in the old days of the Collector or Deputy Commissioner. The Statutory Commission need not come out to India to find out that the six or seven years that have elapsed since the passing of the Government of India Act have witnessed a phenomenal increase in the volume and intensity of communal troubles. If the Statutory Commission is to judge of Indian fitness for further advance in responsible self-government solely on the evidence of the facts and circumstances of present-day India it may save itself the trouble of coming out to the country. For judged merely by the facts and circumstances of India the decision may well be dead against any further advance in self-government. But then such a decision would be dead against the whole spirit of Indian government. It would be a politician's not a statesman's decision. It would be the result of an inquisition and not an enquiry. It would miss the whole point of the Government of India Act and of the policy that led to its passing. The Statutory Commission is required by the principles of that policy—which indeed is only a

recovery of the old statesmanship of a Munro and a Macaulay—to come out to India with a view to helping India on to the road to complete self-government. It ought to come out in the spirit of the good teacher willing and ready to give his pupils of his best and to show them how to become self-reliant and self-governing. It must not do its work in the spirit of the bad examiner who sets out to find out how little his pupils know. It should come not in order to find fault, but to discover faults. And these faults may be in the system of government or in the political character and social condition of the people. And having discovered whatever defects there may be in the present system of government and in the life of the people it will devise ways and means of getting rid of these defects. The whole system of government from the bottom to the top must be reviewed—for all the parts of government hang together and influence each other. The political and social character of the people must be measured. And the system of government must be so reformed and political character and social conditions so trained—*i.e.*, as far indeed as constitutional arrangements can do this—as to fit government and people for the tasks and responsibilities of freedom.

Such a kind of enquiry as to the most educative form of government for India requires in the enquirers not so much great knowledge—for that

will be supplied to them in the course of their enquiry—but a well-tuned imagination and a high courage. But above all is required the right kind of political philosophy that will inform the whole enquiry and take possession of the minds of the men making the enquiry. "Ideals determine history" said Lord Acton and the political value of the work the Commission will do for India will depend on the viaticum of ideals with which they set out on their great quest.

III

Local Self-Government.

If the Statutory Commission are to fulfil their appointed task of devising ways and means of helping India to responsible self-government they should see to it that the foundations of the future national self-government of India are well and truly laid. It is one of the political truths deposited by history that national self-government flourishes only in those countries in which local self-government has struck deep roots in the political life of the people. It is a well-known fact of history that one of the causes for the long continuance in England of constitutional government, which, in most countries of the Continent, where it had the same brilliant and, even as in Spain earlier, beginnings had decayed and died out by the end of the Middle Ages, was precisely the much sturdier and freer life of the institutions of local government in England than that which those of the Continental countries were able to live. And even on the Continent wherever local institutions still survived in some considerable vigour they were the means by which the earlier tradition of constitutional government was recovered. According to Quinet, the provincial liberties of the Dauphiné showed the

French Revolution the way to resistance to the *ancien regime* and served as a lever to the new constitutional opinion that was rearing its head on the eve of the great change.

The early British administrators in India realised the influence of preserving and developing institutions of local government. The authors of the report on Constitutional Reforms which was the basis of the present constitution recognise that "it is by taking part in the management of local affairs that aptitude for handling the problem of government will most readily be acquired, and that responsible institutions will not be stably-rooted until they become broad-based." They were not satisfied with the progress so far achieved of freedom in the institutions of local government and they made a number of proposals which would carry local government still further in the direction of popular self-government. But they were not satisfied that they had gone far enough and proposed to the Statutory Commission of ten years after that it should examine the progress and working of local self-governing bodies. It is necessary to lay stress on this need for examination of the present position of local self-government in India for it is not one of the subjects expressly laid down as a subject for enquiry in section 84-A of the Government of India Act and there is a class of political critics in India who would like this subject to be excluded from the

scope of enquiry by the Commission. The need for examining the present position of local self-government is urgent as the importance of extending the principles and institutions of freedom and autonomy in local government before the higher flights of free provincial and national government are attempted will be at once conceded: The one saving feature of that *tour de force* in constitution-making, the Commonwealth of India Bill, so faithfully nursed by Mrs. Annie Besant, is the provision it makes for a new system of local government. But even there it is relegated to the end of the Bill. The reason for some critics opposing the inclusion of this subject for examination by the Statutory Commission may be that it would be throwing an intolerable burden upon the Commission, and that it would be better to commit this work to a separate body. But I think it would of the greatest advantage to have the whole plan of government in India from the foundation to the topmost story examined by one commission, who could view it as a whole. The parts of government are most intimately related to and influence each other and hang together. To bring about certain changes in the structure it may be necessary to strengthen or modify the foundations.

A survey of the condition of local self-government in the last seven or eight years as it is described in official reviews of their administration

reveals a number of defects. In spite of the popularising of local boards recommended by the Government of India Resolution of 1918 on local self-government, the interest in local government taken by the people is not as great as one might desire. The absence of a strong and critical public opinion is a characteristic feature of the public life lived around local bodies. The fact that there are few newspapers published at the headquarters of districts is significant. Even the vernacular papers that circulate down to the villages are published at the provincial capitals. The vernacular papers do not employ a staff of paid correspondents posted at district or taluk headquarters and the news these papers publish of the doings of local boards or their officials is what they can get from honorary correspondents or casual busy-bodies—a means of getting copy which no newspaper-man would call efficient. Another serious defect that lames local self-government is the lack of men of leisure to take up the leadership of local public life. Formerly when local bodies had district officials as Presidents or Vice-Presidents they had men of knowledge, experience and influence ready to their hands supplied by an efficient government service. But now that Presidents of District Boards and Chairmen of Municipalities are becoming more and more elected non-officials, the supply of the necessary number of men sufficient for the task of presiding

over the government of these bodies has become a difficult matter. The over-worked lawyer or other professional man forms the class from which Presidents of District Boards and Chairmen of Municipalities come. The large size of the average Indian district, its imperfect communications, the vast works of water supply, drainage and sanitation that the modern municipality requires, the confirmed and persistent tendency of the revenue collection of these bodies to fall into arrears calls for men not only of education and of capacity for business, but, especially, of leisure. More and more the Presidentship of local bodies is becoming a whole-time business. And unless we can call up a class of leisured men to devote their whole time to the tasks of local leadership, there is little chance for the development of a vigorous system of local self-government in India. A third and almost universal and most serious drawback in the public life of the districts and municipalities of India is the lack of real leadership among the members of the governing councils of these local bodies. Very often members and presidents of local boards speak and act as if they were the mere mouthpiece of their constituents. They refuse the responsibilities of leadership for which indeed they were put into these positions of eminence. This lack of civil courage is especially revealed in the disinclination to impose additional taxation to meet the cost of additional

improvements that the progress of the people entrusted to the government of these local bodies demands. Year after year the official reports reviewing the work of local bodies place on record the distaste felt by these bodies to meet additional expenditure from additional taxation raised by themselves. Not only official reports but experience of local board elections proves the same story. Nothing carries a candidate so far in the favour of the electors than a promise to reduce the rates or at any rate not to increase them. The result of this conspiracy between representatives and constituents is the dependence of local bodies on the provincial government for all increase in resources. Requests to the provincial government for doles celebrate the visits to Governors or Ministers touring the territory committed to their care. Another sign of irresponsibility displayed by the governing bodies of local government is "the serious deterioration" in the collection of revenue which is another annually recurring tale of complaint to be found in the reviews of local government. Roads and bridges and water works and drains and education and medical relief cost money. And if local bodies want to be given the right to call the tune they must be prepared to pay the piper.

These defects of present-day local self-government—the most serious ones of which alone I need refer to here—must be reviewed and remedied if

provincial and national self-government are to grow and flourish. First among the reforms that are called for by the needs of local self-government is the conversion of all local boards and municipalities into purely elected bodies. Already ever since the issue of the Government of India Resolution of 1918 the tendency towards making local bodies largely elective has been growing in strength. At present the elected element in district boards all over India is on the average a little over 50 per cent and in the municipalities on the average about 75 per cent. This tendency towards an increase in the elected element has been accompanied by an increase in the keenness of the interest taken by the people in the business of local government and in the growth of public spirit. Local board elections and politics have begun to be the preoccupation of men who till now used to waste their time and substance in questionable pursuits. The interest is not indeed as intense nor the public spirit as general as one would like them to be. But the success of the experiment made so far in the increase of the elected element warrants the belief that the time has come for making the councils of these local bodies completely elected. The time has, I think, come for our trying to do away with the system of nominations to local bodies. It may be that a few communities like the depressed classes may go unrepresented in them. But it may be possible to

devise a system of separate electorates for them so that they can also get the political education that comes from electing and being elected to representative assemblies. If the system of nomination as a means of constituting representative assemblies in this country is to go at all, the experiment ought to be tried at once in the constitution of the representative assemblies of local bodies.

Great changes are also required in the system of local franchise. The franchise must be extended below the level kept for elections to the provincial councils. The absurd anomaly which prevails in the Madras Presidency of indirect election in the case of district boards and of direct election in the case of the Provincial Council and the Central Legislature must forthwith cease. How this anomaly could have been allowed to stand on the Statute Book after the passing of the Government of India Act, 1919, which allowed rules to be made sanctioning the system of direct elections even in the case of elections to the Council of State passes one's comprehension. Of course precautions should be taken to ensure the representation of certain minorities. The *cheries* of the depressed classes might be constituted into a separate electorate for these people. And through a proper redistribution of seats adequate representation of other minorities like Musulmans and Indian Christians might be secured. And proportional represent-

ation rather than institutional constituencies may secure the representation of minorities like Europeans and Anglo-Indians in municipal areas. The principle of election can be safely applied to the constitution of the village panchayat. Village government through the panchayat is the one historical institution which is worth preserving. And it is of happy augury that it is being revived all over the country. Only we must take care that the spirit of caste does not dominate the constitution of the panchayat and that the depressed classes get some place in the sun of village government. And the authority of the central government must be brought home to the business and bosoms of the villagers. Finally, if all these local bodies are to be elected there, is no point in retaining nominated presidents and chairmen. Elected councils will tolerate only elected leaders.

Reform in regard to the financial and administrative control exercised by provincial governments over local bodies would also seem to be required if these local bodies are to become really free and self-governing. The sources of revenue allowed to local bodies are few and inelastic. Maximum rates are imposed by law in regard to the land cess and in Madras even the assessment and collection of this land cess are in the hands of the revenue authorities of the provincial government and not in the hands of the tax collectors appointed by, and responsible

to, the district boards. A proviso to section 93 (1) of the Madras Local Boards Act of 1920 exempts "a person who holds any appointment, public or private, or is in receipt of any pension or income from investments from the payment of profession tax"—an exemption which should make the mouths of the numerous officials in the city of Madras water, as the Madras City Municipal Act provides no such exemption. To increase or improve the sources of revenue open to local bodies is an urgently required reform. The Indian Taxation Enquiry Committee of 1924-25 suggest that the taxation of real property which is now in a great measure reserved for the State "should be the main basis of local taxation." While restrictions are placed on the financial resources of local bodies the list of duties that they may lay upon themselves is long and comprehensive. Not only the making and maintenance of roads, and bridges and water-works and drainage-systems, but the building and support of hospitals and dispensaries and poor houses and charities, the diffusion of education and with this view the construction and repairs of school houses, the establishment and maintenance of schools, the inspection of schools, and the establishment and maintenance of libraries and reading rooms, may be undertaken by local boards in Madras. Of course, none of these duties are compulsorily imposed upon district boards. But it would be difficult for president

or parties in district boards to resist the temptation of window dressing and preferring the flashy luxury to the drab necessary. There is more fame to be earned—such fame as comes from cheap newspaper advertisement—out of building a hospital or a railway or out of imposing free and compulsory education than out of building roads and bridges and wells and drains and sewers. It is not a matter for surprise that as the Director of Information records year after year “education and medical relief are more popular items of expenditure with local bodies than roads and village reconstruction schemes.” It may well be a matter for serious consideration whether, in view of the fact that local self-government is a plant of recent and delicate growth, it is not wise for provincial governments to take education and medical relief out of the jurisdiction of local bodies. As matters stand the relation of administrative duties to financial rights is hardly equitable. To complete the account of the financial control exercised by provincial governments over local bodies it may be added that they have the right to alter the budget of the latter.

Turning from the financial to the administrative control we find that Madras district board engineers and health officers are not removable except by the local government or with their consent and the salaries of the officials are fixed by the local government. According to the Madras City

Municipal Act, the Commissioner is appointed by the provincial government. There is an amusing provision in the Madras Local Boards Act of 1920 the object of which is to prevent local board service becoming more attractive than government service.

As long as restrictions such as these exist local, self-government cannot be said to be complete and altogether free. Not that all restrictions should go. The lack of steady and efficient supervision of local institutions by the central government has been for centuries the fatal defect of the Indian administrative system. But it is quite possible to have this control and at the same time to give local bodies full freedom of action within the limits of their jurisdiction. They must be given liberty to make fools of themselves but must be rapped on the knuckles for their folly. Strict audit and accounts control should be exercised by the provincial government. But they should be allowed complete financial and administrative freedom. The abuse of this freedom ought to be prevented by a suspension of their privileges. But till they abuse their freedom they must be allowed to use it. And the release of the district boards from control by provincial governments must be accompanied by a corresponding increase of self-government in the village. It is a sign of promise that the village panchayats that are being revived are given judicial as well as administrative and financial powers. It would be

well if the villages recovered their old right of organising their own police. Not only would the huge gaps in rural policing be filled up but the people would be directly interested in the maintenance of law and order in regard to which they just look on at present. But much more must be done than is being done to accelerate the increase in the number of village panchayats. The proportion of 750 panchayats to the 50,000 villages of the Madras Presidency can hardly be considered satisfactory. The village, the town, the district are the first training grounds for the political development of the masses of the people of India. "The commune", Sismondi says, "is the first association that is offered to the observation and to the affections of those in whom social ideas germinate with difficulty." And it may be added, the responsibility of the people can be much better, more directly, more immediately realised in local government than in the provincial or national government where the responsibility, if only on account of the numbers involved, is apt to be diluted, dissipated, vague and unreal. If, therefore, the ideal of full responsible government is to be achieved in the provinces and in the country it must find expression here and now in the districts, towns and villages of India.

IV

The Provincial Government.

The reason why I pleaded in the last article for an inclusion within the scope of the ensuing statutory enquiry of the question of placing local government on a thorough and completely popular basis was that any scheme of sound and stable national self-government must be built on the foundations of a free and popular local government. The same reason would call for a further advance of provincial government in the direction of parliamentary freedom and "responsible" rule. The authors of the Reforms scheme, indeed, preface and defend their proposals with the view that the "provinces are the domain in which the earlier steps towards the progressive realisation of responsible government should be taken." They recommended that some measure of responsibility should be given at once, "their aim being to give complete responsibility as soon as conditions permit." With a view to these immediate and ultimate results they recommended the incorporation in the constitution of India of the system of government known to fame as Dyarchy. And it is this system that has, thanks to the Government of India Act of 1919, so far attempted to realise the

ideal of responsible self-government in India. The question, therefore, is, provided the conditions permit, and this conditional clause we shall examine later, whether the line of advance in the direction of liberalising and popularising provincial government should take the road of Dyarchy or some other road. In order that we may be justified in advancing on the road of Dyarchy we must satisfy ourselves that it is well-built, that it will bear the strain of the people and the traffic that will use it and above all that it will lead us quickly to the city of responsible self-government.

Dyarchy has been in operation for seven years and has had enough time to prove its value as a means of training for responsible self-government. What is the verdict of experience on Dyarchy as a means of training the people towards responsible self-government? For, it cannot be too often repeated that we are concerned with Dyarchy only as a method of government that will train the people using it towards the end of responsible self-government. The question whether Dyarchy can work at all is in this view an irrelevant question. Dyarchy like any other illogical system—and most systems of government which try to realise the two great ideals of unity and liberty are illogical—can be worked, provided the requisite sense of duty, of proportion and of humour are available among the people using it. More illogical and more absurd

than Indian Dyarchy was the Roman Republican government with its two Consuls, its three popular assemblies with equal and co-ordinate and concurrent legislative power, with its aristocratic Senate, deliberative and executive body, and with the veto of the tribunes. And yet it worked for centuries serving the ends of government and of liberty. The Roman system worked. And Indian Dyarchy can be worked, provided the necessary conditions of a tactful and leader-like Governor, of harmonious co-operation between the two executive parts of the government, a sympathetic Finance Member, a Legislative Council pledged to work it are forthcoming. Indian Dyarchy can be worked and has been worked. But that is not the point. The point, rather, is whether it has offered training ground for popular self-government in the provinces. Has it made the Legislature more and more responsible to the Electorate? Have the Ministers become more and more responsible to the Legislature? Have the Ministers been able to use their powers to the ends of good government? Have they been able to launch out great legislative programmes and carried them into effect? Have they developed into responsible leaders of the people, teaching the people not only how to enjoy the sweets but how to bear the burdens of responsibility?

The answers to these questions will show how far Dyarchy can be used as an exercise towards responsible self-government. The evidence produced in the Report of the Reforms Enquiry Committee of 1924 shows, that however well it worked as a system of government it has done singularly little to educate the electorate, the Legislative Councils and the Ministers in the art of responsible self-government. The Reforms Enquiry Committee publish the fact that, except in Madras, the Ministries have not been able to carry out any large legislative programme. The lack of money with which the reformed provincial Councils were set on their career cannot altogether account for this poverty of legislation, for the Madras Presidency was as hard hit by the Meston award as any other province in India. The true cause of this drying up of the wells of legislation was the absence of strong, well-organised parties divided from each other by principle. More than one provincial government refers to this absence of organised parties in the Councils. The imperfect organisation of parties may be in part due to the prevalence of communal faction. But this is only a partial explanation. The Swarajists have proved that it is possible to form political parties on the basis of political principle and programmes. The true cause for the absence of a real party system which, as English experience shows, is the most conducive to legislative fertility is the peculiar kind of

responsibility that Diarchy embodies. It is not the imperfect responsibility of the system which is the sin of Dyarchy. It is not because the responsibility is attached only to some of the departments of government that Dyarchy is so barren of political results. It is rather because the responsibility is not easy to fix.

It is difficult to fix responsibility on the Ministers when for the collection of the bulk of the provincial revenue not they but their colleagues of the reserved half are responsible. It is difficult to fix responsibility on the Ministers when they have to depend for their share of the common purse on a Finance Member who does not hold office by the tenure by which they hold theirs. An Excise Minister egged on by party demands to announce a programme of prohibition could always throw the obloquy of failure to carry out that policy into legislative effect on his financial colleague. Ministerial responsibility being so difficult to fix and so easily evaded, it is not to be wondered at that the training in responsibility that was expected from Dyarchy was not to be had. In the absence of an easily fixed responsibility, the failure of groups to coagulate into two parties, the one in office, the other in opposition, is easily explained. Apart from the fact that the Swarajists have made good electoral use of the great advantage they possess of never having accepted office and have entered the Councils

in numbers that make them the strongest single party in most of the Councils and yet refuse to accept office, the other circumstances of the life of the provincial Councils do not help the formation of two sharply divided parties, the one in office and the other trying to oust their rival from it. The reserved part of the Executive being irremovable the opposition is a fluid, varying body. The spectacle has been witnessed in more than one Council of Ministerialists voting against the "reserved" half and of a Swarajist opposition voting with the "reserved" half. Some portion of a Ministry's support depending on the good will of the reserved executive half, on the official, and on part if not the whole of the nominated *bloc*, a Ministry is not tempted to embark upon ambitious legislative programmes. Most Ministries therefore have contented themselves with running the routine administration of their departments. That means of political instruction which comes to a people from two great political parties engaged in high debate on the great legislative programmes of one of them has under the Dyarchic system been denied the people in this country except, for some time in, Madras. In extenuation and explanation of this result of Dyarchy we may remember that in England the two party system did not get firmly established till responsible government was achieved. But to explain one of the results of Dyarchy in this wise is really to condemn it.

The difficulty of fixing responsibility under Dyarchy also accounts for the little that it has done for the political education of the people. That elections do little or nothing to afford political instruction to the electorate is a well attested fact. Almost every provincial government in its report on the matter to the Government of India of which the Reforms Enquiry Committee make use speaks of the little political canvassing, the much less pamphleteering, that attend Indian elections and the utter absence of any of that attempt "to legislate from the hustings" which is the characteristic feature of popular parliamentary government. These methods of educating the electorate are not possible because the fixing of responsibility is difficult and the escape from responsibility is easy under Dyarchy. The Ministers and their supporters throw the blame for their sins of omission and of commission upon the reserved half in one of whom is placed the financial control of the whole government. "What can one do" say the Ministers and their supporters to the electorate "when our grants have to be released by a watchdog of the provincial purse who does not belong to our family and who has to offer the first refusal to his own departments or the departments of his better half. What can one do when we have to depend for our support in the Council on the votes of the official *bloc*." And so Ministers easily evade responsibility and they feel it is not up to them to

justify their stay in office by placing before the country large legislative programmes and discussing them before the electorate and to its benefit. Again, the particular division that has been effected of functions between the reserved and transferred halves has also militated against the political education of the electorate. No doubt "nation-building" and important departments like those of education, local-self-government, Industries and Agriculture have been turned over to the Ministers. But to the ryot whose eyes are fixed on the grey metallic sky or on the woolly fleeting clouds, when they are not fixed on his brown patch of land, what are education and industries but luxuries and costly luxuries at that? They cannot rouse his interest to the point of instruction. What he is interested in is the land revenue assessment, taxation, forests, irrigation, and especially minor irrigation. These subjects would awaken the interest of the rural electorate. But they are taboo to Ministers, who cannot talk of them to the electors except as an additional illustration of their helplessness against the other half of the executive. The political education of the electorate has gone by the board because the ministerial responsibility which was to be the chief means of that education has been so incompletely realisable under Dyarchy.

It is this failure to teach responsibility to the people and the rulers they are allowed to elect under

the reformed system of government in the provinces that calls for the abolition of Dyarchy. And any system of provincial government that is to take its place must get what it has failed to give. Any future system of provincial government must serve these two purposes—the fixing of responsibility and the education of the electors and elected, of the legislature and the executive in responsibility. There are two ways in which provincial governments may be made to realise these two purposes. The easier and the more complete way is to make provincial government completely responsible. The other way is to make provincial government all but completely responsible, reserving only one or two subjects of government for administration by an irresponsible and irremovable executive but removing all those obstacles to the fixing of responsibility which form the cardinal defect of the present system of Dyarchy. Of these two methods of creating real responsibility in provincial government there can be no doubt which offers the easier path to choose. The unity of the executive, the joint responsibility of the executive, the responsibility of the executive to the legislature, the harmonious co-operation of the executive with the legislature, the responsibility of the legislature to the electorate, in fact all the principles of efficient responsible government, would then become realities. Responsible government in the provinces would be simplified.

Granted that the principle of responsibility must be introduced in provincial government, the advantage of simplicity will be appreciated by all those who have had anything to do with the difficult business of parliamentary government.

What are the objections to the immediate grant of full responsible government in the provinces? Critics will urge that it will lead to inefficiency in important departments of administration. Of course, it will. But as everyone recognises, the only way to learn to rule is to rule. And mistakes are the price men have to pay for freedom. And provided the inefficiency does not lead to sheer anarchy the price may and ought to be paid. Law and order have during these past years been administered by Indian members of provincial executive councils. And merely entrusting law and order to Indian Ministers responsible to the people is not going to lead the country into "red ruin and the breaking up of laws." The people, as Burke said, are not interested in disorder. And making the Ministers for law and order responsible to the people will not in the long run tend to inefficiency in the administration of these important subjects of government. Similarly in the other departments of government now reserved to an irresponsible and irremovable executive, popular Ministers will learn to administer them in the act of administering them. Mistakes there will be, inefficiency there is bound to be. But the advantage of

responsible parliamentary government is that the mistakes must be original and the inefficiency may not be repeated. The competition between parties will make the mistakes reparable and the inefficiency temporary. Full responsible government in the provinces will prevent certain political parties from making an unfair use of the terrible advantage, as a French wit put it, of doing nothing. Finally complete responsibility in provincial government will have the advantage that it will meet the demand of "political opinion." That is an advantage not to be despised by the rulers of India. It cannot make for the smooth sailing of government to submit it to an incessant firing from hostile craft. Government in India for the past seven or eight years has been kept on the jumps by the incessant gucrilla agitation that has fastened itself on the unsatisfactory features of Dyarchy. Schemes of constructive progress have been delayed or given up thanks to the noise and irritation of this incessant agitation. It is true that most of this agitation is restricted to a minority and that it is not broad-based upon the real public opinion of the people. But it is there all the same, an alien element in the body politic disturbing and distracting the minds of government and people which ought to concentrate on great measures of conservation and progress. And the minority have the ear of the people—such ear as the people can give to public affairs. The grant of "provincial

autonomy" as Indian political jargon has it, will satisfy Indian political opinion, and, if in addition to other advantages this advantage can be secured, it is worth securing for a government harassed and hen-pecked as Indian Government has been in recent years.

Responsible government for all its popular appeal is free government. And free government excludes the unchecked domination of any one power in the State. Although the people are the ultimate sovereign and the source of power, the institutions of free government prevent even the people from being tyrants. Free government is a government therefore of checks and balances. And the grant of complete responsibility in provincial government must be accompanied by the institution of those checks and balances which the most advanced systems of popular government have not disdained. A strong second chamber is one of the essential elements of modern democratic republican government. The veto of the head of the executive is another of the defences of popular government against parliamentary vagary. "An absolute or qualified negative in the executive upon the acts of the legislative body," says Hamilton, the Federalist, "is admitted by the ablest adepts in political science to be an indispensable barrier against the encroachments of the latter upon the former." The Governor's veto must be retained and see section 52, sub-section

3 of the Government of India Act may stand subject to the Joint Committee's advice to Governors on their use of the veto. Other checks and balances like a "consolidated fund" of certain essential services not subject to the annual vote of the legislature, and the previous sanction of the Government of India may also be brought to bear upon the provincial government of the future.

The grant of complete responsibility in provincial government is the easy and thorough method of constitutional reform. But it requires certain predisposing conditions. It requires for its successful working, a sunny atmosphere of communal peace, a general and genial feeling of confidence among the minorities and backward classes in the justice, if not in the wisdom of the governing classes, a loyal and subordinate provincial civil service, a never-failing supply of wise and "parliamentary" Governors. It may not be possible to secure all these conditions in all the provinces. If in certain provinces for some prevailing reasons, like the communal tension, the well-grounded suspicions of minorities, the unconquerable distrust of the depressed classes, the grant of full responsibility is out of the question, whatever the future system of provincial government may be it ought not to repeat the proved mistakes of Dyarchy. Whatever responsibility there is to be must be complete and easily fixed. The responsible part of the provincial government must

have its own purse, its own sources of revenue, control over its expenditure, its own Finance Member. The arguments of the Joint Parliamentary Committee against a separate purse for the responsible half of the executive are not convincing. The difficulty of separating sources of revenue is not greater than the difficulty of separating subjects of government into provincial and central, transferred and reserved. When a Government, like the Government of India obsessed with the argument of practical difficulties, was prepared to recommend a separate purse in their First Despatch on the Reforms, the practical difficulties in the way cannot be formidable. The idea of the Joint Committee that executive government ought to be treated as a whole, though sound, has not subserved the purpose of the new system of government which was the teaching of responsibility by the easy fixing of responsibility. The "simple process of common sense and reasonable give and take" may have produced harmonious working between the two halves but it has not fixed responsibility. The Civil Service placed at the disposal of the responsible part of the provincial government must be under the control of Ministers as regards promotion and transfer. The Legislative Council that has to deal with such a half responsible provincial government must be a whole by itself. It ought to be wholly elected and wholly master of the responsible part of

the executive. If for cogent reasons the responsibility in provincial government is to be partial, there is no reason why it should be incomplete. Within the limits marked out for it by need the responsibility ought to be complete and thoroughgoing. The non-responsible, irremovable, executive must be allowed to administer its departments without paralysing let or hindrance from a legislature with an elected majority and, therefore, presumably hostile to it.

It is only in this way by building up a system of government each part of which, executive, legislative and electorate, is informed by the principle of responsibility that responsibility can be taught and enforced. The evil of creating an *imperium in imperio* cannot be avoided. To avoid this evil the authors of the Government of India Act built up a mixed government embodying the two incompatible principles of "responsibility" and non-responsibility. They thought that political education would be thereby advanced and political experience become more general. While failing to achieve these objects this system has led to deadlocks, irritation and easy escape from, and evasion of, responsibility. Whatever the system of mixed government has or has not achieved it has not realised that training in responsibility which was the chief and dominant idea of the Reforms of 1919. And it will be the part of wisdom to avoid the mistake in the future,

V

The Central Government.

Following the recommendations of the authors of the Montagu-Chelmsford Report on Indian Constitutional Reform, the Government of India Act of 1919 introduced no element of responsibility into the central government in India. The Government of India was to remain, as heretofore, wholly responsible to the British Parliament and to no extent responsible to the people of India. The reasons given by the authors of the Reforms require some examination. The reasons given in the Montagu-Chelmsford Report are more frank than convincing. For the "hybrid arrangements introduced in the provincial government precedents are wanting; their working must be experimental." The authors of the Report were not prepared, without experience of their results, to effect the same changes in the Government of India that they were introducing in provincial government. Apart from the view that if the authors of the Reforms proposals were not certain of even the probable results of their scheme, they should not have proposed it even for provincial government, they might have paused to consider whether the government of a country, being a whole and requiring to be treated as a whole, it was

wise to introduce one principle of government into one part and debar all entrance of that principle in another part of government. Nor do the Joint Committee of Parliament follow out the reasons of their argument for reform into the sphere of the central Government of India. If it is wise that from the beginning the people must be given the opportunity of learning the actual business of government, we may ask whether it was wise to exclude the people from all touch with the business of central government by denying them all responsibility in regard to this sphere of government.

The reasons advanced for not introducing the element of responsibility in the central government being so unacceptable, one might be tempted to think that it was a feeling of tiredness that kept the hands of the reformers off the central government. But even this charitable, if hardly creditable, explanation is not open to the authors of the Reforms Act to advance. For they have introduced certain drastic changes in the constitution of the Government of India. They converted the old Minto-Morley Council—one of whose authors stoutly denied its claims to be anything more than a mere Legislative Council—into a veritable parliament. They introduced a large elected majority into the Indian Legislative Assembly. It was given power to legislate and to pass or reject the Budget. Such a powerful elected legislature they confront with an irresponsible and

irremovable executive. If the authors of the Reforms Act had deliberately willed trouble, they could not have done it more thoroughly.

If the authors of the Reforms Act did not think that the time had come for changing the idea or the form of the Government of India, why did they not leave it alone? They did not want to introduce any new idea into the central government, then why did they change the form of one of the institutions of central government? Did they not know that every form breathes an idea, and that to create a new form releases the idea which it embodies? Did they not know that the grant of power carries with it the right to exercise it? It may be that the time had not come for the introduction of the principle of "responsibility" in the central government. One may quarrel with them for having come to such a conclusion. But one cannot quarrel with them had they come to such a conclusion and refused to change the form of central government. They would not only have been logical, which is not a merit in politics, but they would have been true to their conclusions. Instead of leaving the form of central government alone, they introduced an elected majority into the Indian Legislative Assembly. They might have been reminded of the saying of one of their own colonial statesmen, Sir George Bowen, that "to grant representative institutions and refuse to grant responsible government is like lighting the

fire and stopping the chimney." To oppose an irresponsible, irremovable executive to a representative legislature with an elected majority is like feeding a horse on an unmixed diet of corn and then complaining of beans.

All the irritated relations between the executive and the legislature, the rejections of the Budget, the passing of impossible resolutions by the legislature, the deadlocks, of the past nine years are to be explained by the positive provocation to these things that the reformed constitution contained. If the legislature was irresponsible and irreconcilable, it was because the executive was intransigent, not out of sheer cussedness but on account of its irremovability. The atmosphere of unreality in which the two institutions of government worked, was patent to any one who saw them in contact with each other during the last nine years. But the unreality was not merely a matter of atmosphere. It was positively demoralising to the executive as well as to the legislature. The idea of responsibility could not be taught such a legislature. The most representative men of India were brought into the central legislature and they were given less power than men with a merely provincial reputation, Lord Meston once said that the new Indian constitution was interesting, as it gave an opportunity to the keen Brahman intellect to play upon the business of government. But what

had the keen intellect of India to play upon in the central legislature? It could not practise its teeth upon the hard stuff of administration except to bite at the executive from time to time. The executive could not get those great measures of reform—financial, administrative, legal—of which the country is in dire need. It has just carried on the routine administration of the country, just able to get absolutely necessary reform by desperate canvassing and bargains, and when the worst came to the worst, by a resort to the extraordinary power vested by the constitution in the Governor-General.

The only explanation for the authors of the Reforms Act introducing these elements of mischievous distraction into the central government is that they wanted to do something. And they have done it. But if that was their object they might have contented themselves with merely enlarging the Indian Legislative Assembly making it more representative than it had been, but retaining an official majority so as to keep the irremovable executive not only in power but in countenance. Of course the dissatisfaction with the constitution would have been just as general and profound. But it would not have been so disturbing and irritating and demoralising as it is now. If the authors of the Reforms Act wanted to do something to show advance in regard to central government, they might have done

something else. The art of government is illustrated not only in the doing of things but also and much better in refraining from doing things.

If the powers of the central legislature granted by the present constitution are incompatible with their representative and elective character, the only way out is to increase the power so that it may be more attuned to the character. It is too late to think of displacing the elected by an official majority. *Nulla vestigia retrorsum* is the inscription that ought to be placed on the portals of government, especially of Indian government. A native government with no suspicious political class facing it may retrace its steps and may go backwards and forwards in the granting of boons. But placed as Indian government is, ever liable to have its actions placed in a false light and misconstrued, it cannot take the risk of taking back any concession once granted in the direction of popular government. The conversion of the elected into an official majority being out of the pale of practical politics, the only way out of the *impasse* which the relations between the executive and the legislature have reached is to endow the legislature with some control over the executive. The principle of responsibility will have to be introduced into the central government. But the cloven foot of Dyarchy, which has left such an evil trail behind it in the provinces, must not be allowed to enter there. It is hardly possible to

introduce full responsibility here and now in the central government. For the conditions precedent for the success of fully responsible national self-government have not yet come into existence. Till national unity is much more advanced and assured than it is at present, till a much more national civil service and one dependent on no authority outside the Government of India comes into existence, till a predominantly national army is brought into being, it would be childish to desire the grant of completely responsible national self-government. For national self-government has not only to be obtained but it has to be kept against all comers inside or outside the country. And without a secure national unity, without a predominantly national civil service ultimately subordinate to the national government, and especially without a national army that can be trusted to defend the national self-government, India will not be able to hold what she may be able to get. Complete responsibility in the central government is an objective to be eagerly striven for, from year to year and month to month, not by iteration and reiteration of the demand for it, but by patiently and purposively preparing the conditions precedent to it. Swaraj is not a gift for immediate presentation, but a prize for which the people might go into immediate training.

To say that complete responsibility cannot be introduced now in the central government is not to

shut the door against the introduction of that principle in this or that portion of the Government of India. We have seen the pass to which a denial of that principle has brought the central government. The authors of the Reforms Act committed a grave error of judgment when they refused to introduce the principle of responsibility somewhere into the central government. They to that extent denied the value of the preamble which aimed at "the gradual development of self-governing institutions," for they thought they could introduce responsibility in the limbs without introducing it in the head of Indian Government. That mistake of theirs must not be repeated. The principle of responsibility must be introduced in regard to certain subjects of central government. At present there are seven different departments of central government, known as the Departments of Law, of Commerce and Railways, of Industries and Labour, Education and Agriculture, of the Army, of Foreign Affairs, of Home Affairs and of Finance. Of these, it is obvious that till a national army comes into being, the administration of the Army and of Foreign Affairs cannot be placed in the hands of an executive responsible to and dependent on the legislature for its existence. And as the maintenance of Law and Order on a national scale may require the aid of the army and as the organisation of law and order by a popular executive requires a high degree of national

unity, it is difficult to reconcile oneself to the transfer of the Home Department of the Government of India into the hands of an executive responsible to and dependent on a popular legislature. There remain the departments of Law, of Commerce and Railways, Industries and Labour, of Education and Agriculture and of Finance. Of these, if the defects of dyarchy in the present system of provincial government are to be avoided, the Finance Department will have to be split into two so that each portion of the future Government of India may have its own purse. And in order that the Army, Foreign Affairs, may have its own sources of revenue it may be necessary to group Commerce and Railways with these departments of government. This grouping would leave Law, Education and Agriculture, Industries and Labour (including Posts and Telegraph) as subjects for transfer into the hands of an executive responsible to and dependent on a popular legislature. In this way and to this extent the principle of responsibility might well be introduced into the central government.

It goes without saying again that whatever responsibility is introduced in the central government, the mistakes of dyarchy must not enter. A separate purse for the responsible and non-responsible part of the central executive is an obvious necessity. The grouping of Railways and Commerce with the Army Foreign and Home Affairs would give the latter

departments the revenues and the control over revenues that they would require. The average net revenue for Customs and Railways with 4 crores from military receipts is about 55 crores and this with the opium revenue thrust in would cover the expenditure on the Army (which is now about 55 crores) and on Home Affairs and Foreign Affairs. For the administration of the transferred departments the other sources of revenue would be available, *i.e.*, the Income-tax, Salt, Posts and Telegraphs, etc. This revenue ought to be enough for the administration of the Departments of Law, of Education and Agriculture, of Industries and Labour. A separate Finance Member there will have to be for the financial administration of each portion of the central executive. This bicephalous financial administration will certainly not seem as easy as it appears. The management of the 'Currency and Exchange and Credit will certainly offer a formidable difficulty if the financial administration of the country is going to be divided in this manner. But in view of the other and decided advantages of a separate financial administration for each of the divided portions of the central government, one may hope that means might be devised for the financial administration of a few common subjects. For instance the management of the currency might be left to a Central Reserve Bank which everyone who desires the financial freedom of India would like to see established in some form or other and as soon as possible.

That the advantages of a separate purse must be realised if responsibility is to be introduced in the central government, no one will gainsay. The two portions of the executive will have their own sources of revenue to handle. Economy in administration, resourcefulness in taxation, and progressiveness in government will be ensured. Especially the popular part of the executive will have an opportunity of considering all its ideas of reform in the light of the hard facts of administration. They will not be able in future to throw the blame on the other fellow. Responsibility will be fixed where it can be fixed. And real training in responsibility will be possible at the centre of Indian government.

To this end not only must there be financial separation but as far as possible legislative and administrative separation. The two portions of executive government must be related to different kinds of legislatures. The "responsible" portion of the executive must, in the first instance, deal with a wholly elected legislature. As a safeguard it would be necessary to constitute a strong second chamber to perform the duties of a modern second chamber in constitutionally advanced countries, that is to act as a check and balance of the more popular chamber. But, in the main, and for decisions, the responsible executive would have to deal with a responsible legislature wholly elected and therefore responsible to the electorate. The non-responsible, irremovable

portion of the executive will have as partner a legislature thoroughly representative of the country but containing a majority on which the executive can always depend and from which it can secure whatever legislative measure it may require for the performance of its duties. And to avoid multiplication of legislatures this may be the second chamber that will have to be. We must no longer have to witness the sorry spectacle of an irremovable executive warring with an opponent much stronger in voting power than itself. The popular chamber will not lose any of the real power it possesses at present. It will still have the right of moving resolutions on the subjects of government belonging to the non-responsible, irremovable part of the executive, members of which will be present on the occasion of those resolutions to present their case before this part of the legislature. But it will not have the doubtful privilege that the Indian Legislative Assembly has now of refusing to give what the executive can always get from somewhere else. The other branch of the legislature whose constitution and powers we shall consider in a later article will be much more numerous and much more representative of the country than is the present Council of State, but it will not suffer from the fatal flaw of an elected majority confronting an irremovable executive. Whatever this scheme of government may or may not do, whatever its

defects may be, it will avoid the dangerous anomaly of combining representative institutions with non-responsible government. Besides a second chamber, the other safeguards of the executive against the abuse of power by a popular legislature will be as ready to hand to the head of the central government as to the head of the provincial government.

The responsibility introduced into the central government being only partial, the important question arises when this responsibility will become complete and applicable to all the branches of government. We have seen what the conditions of full responsible government are in India. Until we have a national army, and a national civil service, and a very much greater degree of national unity than now obtains, the national self-government will not be worth a moment's purchase. It will have to be given up as soon as it has been given. It is stupid to arrange for constitutional advance according to a time-table. But if a rough indication is required, I should say that we should not think of full responsibility in the central government till at least one-half of the officers of the Indian Army are Indian and one-half of the members of the present All-India services have become Indians. Indian political agitation should therefore fasten in the future on securing the nationalising of the army and of the other services. Indian social organisation should aim at the securing of a more complete and more assured national unity. These are tasks enough for all the political and social energy that may not be exhausted by the working of the new scheme of government.

VI.

The Distribution of Powers.

Free government is a difficult form of government. For it demands a distribution of the powers of government. Absolutism is an easy system of government to work, whatever its disadvantages might be, for the powers of government are fixed and concentrated in one authority and, although for the purpose of administration they may have to be devolved on a number of persons or institutions, they are ultimately traceable to that one authority. But the essence of free government is the division and distribution of the powers of government. And that division and distribution is a permanent and irrevocable division or distribution—that is as long as the constitution lasts—and independent of the will of any one authority in the State. The supreme central government of a State is divided horizontally into the executive, legislative and judicial powers, in the main, though not rigidly and absolutely, separate from and independent of each other. The government of a large State is also divided vertically into central and provincial and local governments with their respective jurisdictions marked off against each other. The devolution of a large measure of governmental power and activity on the parts of a State, its provinces, its districts and its

towns, in the very bone and marrow of free government. Decentralization lies at the very foundation of free government. And this decentralization is not that of the Turkish despot who had to rule with a light hand to keep his vast State together, but a decentralization that will hold by the law and the constitution against the authority of the central government itself.

Although distribution of power is one of the essentials of free government, it presents one of the most difficult problems in constitutional debate. Merely to say that all national matters shall lie within the jurisdiction of the central government and all purely provincial matters shall lie within the jurisdiction of the provincial government does not lead us very near to the solution of this problem. That all national, all-India work, like the defence of the country, trade and commerce, posts and telegraphs, should be entrusted to the administration and legislative jurisdiction of the central government seems to be obvious and will be readily granted. That for the sake of uniformity so necessary in a diversity-riddled country like this, currency and banking, weights and measures, civil and criminal law, patents and copyright, should be in the hands of the central government, everyone will agree. And that the administration of local self-government, medical relief, justice, education, industry and agriculture may be entrusted to provincial

governments will be allowed. And for the financial administration of their respective subjects, the central government may be allocated revenues from Customs, Income-tax, Salt, Opium, Railways; and the provincial governments, revenues from Land Revenue, Excise, Registration, Court stamp fees, etc. But difficulties are inevitable even in a settled system of federal government. Subjects of government are so difficult to divide and so easy to overlap that few federal constitutions have been able to avoid the admitted evil of concurrent jurisdiction. But in a constitution like that of India, a decidedly transitory constitution in which the two opposed principles of responsibility and non-responsibility have to be reconciled, in which one part of the government is to be responsible to the people of this country, and the other part is to be responsible to the British Parliament and the people of England, difficulties simple bristle.

Even in the most self-governing of federal States a clear dividing straight line between central and local subjects is difficult to draw. Only a wavy line of division can be drawn. And the line must bulge here and there considerably in the case of a government in which it would be impossible for many years to have one single principle governing the constitution. Whether provincial government is wholly responsible or not, central government in the present circumstances of India can be only partially

“responsible”. With a central government in which such large and important departments of government as the administration of the national force, of law and order, of commerce and trade, are to be non-responsible, it is difficult to allow, in any matter that may concern the administration of these subjects in the provinces, any exclusive jurisdiction to the provinces. Take the question of the preservation of law and order. For the maintenance of law and order throughout the country, the central government is responsible under the scheme of government that we have considered in the previous article. Suppose a riot takes place in a province and there is a danger that the fire may spread into neighbouring provinces. The duty of the central government is to prevent any such spreading. It may, towards this end, advocate or enforce such measures of suppression as may not be agreeable to the provincial departments of law and order which may look upon such measures as being uncalled for or more than necessary. There is no possibility of any difficulty at the present moment as the provincial department of law and order is only an agent of the central government to which indeed and not to the legislature or the electorate of the province it is responsible. But the difficulty will be there, till full responsibility is introduced in the central as in the provincial government.

Faced by these formidable difficulties political writers have suggested various ways and means

of escape. There is the view of Mr. A. Rangaswami Ayyangar, M.L.A., a student of constitutional problems long before and in spite of his becoming a politician who in the course of a series of articles contributed recently to the *Hindu* suggests that the best way of avoiding the difficulty of relations between a fully self-governing province and even a fully responsible central government is to keep intact the powers of the central government in regard to provincial subjects side by side with those of the provincial government. After stating that the present distribution of powers between the central and provincial governments is based on the principle of concurrent legislative power subject to a system of "previous sanction" and of close administrative control in the hands of the central government and that, subject to this previous sanction, the powers of the central and provincial legislatures are concurrent and plenary, he says he has come to the conclusion "that instead of attempting to frame clear-cut and mutually exclusive schedules of provincial and central powers, it would be much better to accept the principle of previous sanction as being in accord with the existing systems." Mr. Rangaswami Ayyangar's complaint against the present system of distribution of powers is only that it is to the benefit of an alien and bureaucratic central government. One cannot help being surprised at this naive belief in the innocence of

institutions and systems of government as if there were not an inherent viciousness in certain institutions and systems of government. It would seem as if provincial autonomy did not mean provincial self-government but provincial subordination to a native and fully responsible central government. One's suspicion of the weakness of Mr. Rangaswami Ayyangar's position is strengthened by the fact that he finds himself, in regard to this matter, in the company of Sir Frederick Whyte and Sir Malcolm Hailey whom indeed he quotes with approval. Sir Malcolm Hailey during the course of the debate on the "national demand" in the Assembly in 1924 said that "it was but a minor feature in the picture whether the fully responsible legislature shall have any control over the legislatures of the provinces—whether the Ministers (of the central government) shall have any control over the executives of the provinces." And Sir Frederick Whyte in his report on Indian Federation says that "provincial autonomy does not of necessity tell us anything of the conditions of domestic government prevailing in any province." One might ask what Mr. Rangaswami Ayyangar is doing in this particular galley.

If we are to proceed any further in the argument about the distribution of powers between the central and provincial governments, we must have a clear notion of the issues involved. We have to choose between two forms of government for

India—the unitary and centralised form of a union of States like that of South Africa or one with a large measure of self-government marked out for the provinces with which on the marked subjects the central government will have few or rare rights of interference. If “provincial autonomy” means anything it means provincial self-government. The free government of a large country involves decentralization. And decentralization, real and strong and stable, will repudiate the principle and the system of “previous sanction” of a central government. Responsible government in the provinces is incompatible with the previous sanction and the plenary legislative and administrative control of the central government. Responsible provincial government means the responsibility of the provincial executive to a provincial electorate. It would be a travesty of democratic and responsible government to subject a responsible provincial government to a central government which would be responsible to a much smaller, dissimilar and comparatively richer electorate. Such a subjection can be defended only on the mathematical principle that the whole includes and circumscribes the parts. It can be defended on no political principle. It may be that a unitary, centralised system of government is free from difficulties of jurisdiction. But such a system is physically impossible in India. You cannot govern a large country like India from one single centre. And it

would be against the whole trend of constitutional development in the country. It would mean the scrapping of the self-government the provinces already enjoy. In politics it is much easier to refuse to give than to take back what was once given. The retention of "previous sanction" of the central government and the conferring of full legislative and administrative control over the provinces no doubt cuts the Gordian knot of the difficulty of distribution of powers. But cutting the Gordian knot however good in crisis is not to be recommended in the normal business of constitutional government. A better, although a more tedious, way is to try and unravel it.

The only way of making "provincial autonomy" real is to guard it against all comers, especially the central government. In those subjects of administration in regard to which full and responsible provincial self-government has been granted the provinces must for the most part be allowed full freedom of action without let or hindrance from the central government. In subjects like education, local self-government, land and forest administration, agriculture and industries where local circumstances and experiment would dictate policy rather than uniformity, there can be no need for the interposition of the central government. National defence, foreign relations, commerce, posts and telegraphs, railways and the power of taxation

necessary to carry out the duties of this administration, every one will agree, should be put exclusively in the hands of the central government. With the view of promoting national unity or for the sake of uniformity in matters in which uniformity is a prevailing consideration it may be necessary to attribute to the central government exclusive powers of minting and coinage, control over currency and banking, bankruptcy and patents and copy-right and naturalization and criminal law. Of course together with separation of legislative jurisdiction will also go separation of administrative jurisdiction. "Every government ought to carry within itself its own power of preservation," says the *Federalist*. And central subjects under a system of provincial autonomy cannot be administered by provincial agencies. Together with the separation of legislative and administrative jurisdiction must go also the separation of financial jurisdiction. The provinces under any scheme of provincial autonomy must have their own separate purse and accounts. Section 20 of the Government of India Act must be modified so as to allow this. What Hamilton calls "the fallacious and delusive system of contributions" must be given up, and each government, subject to the limitations of its purse, have its own right and powers of financial transaction. The administration of certain backward provinces and military areas and places would, like the Territories in the U.S.A.

be kept in the central government. And as these backward territories have much leeway to make in progress it is all to their good that they are committed to the care of central Education and Development Ministers who would be able to devote much time and energy and the revenues of the central government to the development of these neglected tracts of India.

In spite, however, of the most precise and definite division of powers there will always be certain subjects of government in which it would be impossible to avoid double jurisdiction. The maintenance of law and order, as we have seen already, would be one such subject even were full responsibility introduced in the central government. In the administration of purely central subjects like national defence the central government may come into conflict with the powers of the provincial government. For instance in the making of a military road the central government may come up against the rights over the lands and over local bodies of the provincial government. The regulation of commerce no doubt ought to be a national business, but there is commerce within a province subject to duties levied by local bodies. It would be a good thing for the legal unity of India, a contributory factor to its political unity, that the making of all civil and criminal law should be in the hands of the central legislature. But in a country

like India ruled by custom, it would be difficult to exclude all civil legislation from the provinces. Even in the administration of purely provincial subjects like sanitation, in regard to precautions against contagious diseases the central government may have to step in with legislative or administrative action. Try as we may, we cannot prevent "concurrent jurisdiction." "Avoid concurrent jurisdiction—it is the very devil" telegraphed Sir Wilfred Laurier of Canada to Lord Selborne as the latter was busy engaged with the making of the South African Constitution. But the advice is easier given than followed. All that can be done is to reduce to a minimum the area of concurrent jurisdiction, and to provide for the ending of deadlocks. We have seen that the principle of previous sanction and of plenary and parallel concurrent jurisdiction is opposed to all ideas of free and responsible government in the provinces. To some extent conflict of jurisdiction may be reduced by allotting all residuary power to the central government after the allocation of certain enumerated powers to the provincial governments. Rule 49 of the Devolution Rules may still be retained, for it gives all the security for the good relations between one province and another and between provincial and central government that all would like to see established. The only way of ending difficulties between the central and provincial

governments—for the best laid schemes of men as of mice may oft gang a-gley—is to establish some authority that will decide in all cases of dispute between the two governments. The fear of the intervention of the Courts of Law in the solution of constitutional disputes created by the facts of U.S.A. and Canadian history has prevailed upon even advanced political writers in India to drop this method. The Courts of Law are not the only device used for this purpose. In Switzerland the Federal Assembly decides on the constitutionality of its laws. In India it may be the Governor-General in Council or better still the Governor-General. On account of the vastness of the country, the remoteness of the capital from most of the provinces, the separate-ness of jurisdiction in regard to the most important departments of government, the Executive Council of the Governor-General would be an impartial tribunal. The Governor-General would certainly be a more impartial tribunal. But a device like this is much better than previous sanction and parallel and plenary jurisdiction. For, it is much easier to refuse previous sanction than to decide against a provincial government after the accomplished fact. The two principles we have to bear in

mind and must use as our touchstone in any discussion on the distribution of powers in India are the preservation of provincial self-government in the interests of freedom and the maintenance of a strong central government in all purely national matters for the sake of unity. The one principle is as important and as necessary for the constitution of India as the other.

VII

The Question of Second Chambers.

The question "whether the establishment of Second Chambers of the Local Legislature is or is not desirable" is given great prominence among the subjects of enquiry to be made by the Statutory Commission according to the direction of section 84-A of the Government of India Act of 1919. It will therefore form one of the most important matters of constitutional discussion that the coming of the Statutory Commission will precipitate. There is a widespread belief in political circles in India that Second Chambers are a superfluity and an anachronism. Even the fact that almost all the advanced democracies of the world have felt the need of a Second Chamber seems to leave these critics unconvinced. The need for Second Chambers in India would therefore look as if it required to be proved.

Second Chambers, like the party system and other political institutions, were the creation of historical circumstances and have not been argued into invention. The first Second Chambers like the English House of Lords and the Hungarian Table of Magnates owe their foundations to definite historical circumstances. And in the course of their existences they have rendered so much useful service

to the government of their countries that they have proved the need for similar institutions being established elsewhere. They have in their existence and in the exercise of their functions revealed certain qualities and sources of utility that have been of eminent service to their governments. And other countries have adopted them so that their governments might also similarly benefit.

First among the uses of a Second Chamber is that it serves to make the legislature thoroughly representative of the people. No first or popular Chamber, however well constituted, can claim to be so representative that it can do without supplementary devices of representation. Although members of the aristocratic and landowning classes do get into the House of Commons, it cannot be said that the dominant landowning aristocracy which till recently held the vast bulk of the land of the country would have received adequate representation in Parliament but for the House of Lords. That they get an inordinately large representation in the House of Lords is an argument for the reform not for the abolition of the House of Lords. No one can say that the Legislative Councils of India are thoroughly representative of the provinces. Large landed interests do not secure adequate representation under the present franchise system. If the present Legislative Councils are to become wholly elected the representation that can be secured only

through nomination must find its way into a Second Chamber. There will always be here in India as elsewhere and perhaps more in India than elsewhere a number of people whom it would be necessary to have in the legislature, but who on account of lack of superfluous wealth—and elections have already begun to be costly in India—or on account of independence of party can never come in by way of election. Second Chambers are necessary to complete and supplement the representation in the first or popular branch of the legislature.

They fulfil another supplementing function, *i.e.*, by serving as revision chambers. No single chamber is so perfect that it can claim that the discussion devoted in it to a legislative proposal is all that it requires. Slow and deliberate discussion is what great legislative changes require and to spread the discussion over two assemblies not only ensures appropriate discussion but enhances the sense of responsibility with which the discussion is carried on in either branch of the legislature. A Second Chamber would give scope for what Macdonald, the Canadian statesman, called, sober second thought in legislation. Canadian experience has also shown "that the drafting of Bills is much superior in the Second Chamber to that in the first where, on account of the crowded days, the fast turmoil, the harassing parliamentary and administrative duties

of Ministers," and the pressure of party caucuses, the mechanics of lawmaking is defectively worked.

The strongest argument for Second Chambers is that they form one of the surest defences of political liberty. If governmental power is safe only when it is divided, the legislative power has to be divided and distributed as much as any other. "One single power would end by devouring all" said Lally Tottendal during one of the constitutional debates of the French Revolution when the question of Second Chambers was perhaps more thoroughly discussed than at any other period of parliamentary history. "A Second Chamber" says Lord Acton, no mean champion of liberty, "has been found the essential security for freedom in every democracy". Especially when a legislature becomes powerful as provincial Legislative Councils in India will be, if "provincial autonomy" is granted, has its power to be divided and distributed. When an executive is strong there is no need to divide up legislative power. The authors of the Reforms Act got things upside down when they proposed a Second Chamber to dilute the power of a powerless central legislature facing a powerful and irremovable executive and when they refused to grant Second Chambers to the provincial legislature which was strong and powerful as against at least one portion of the provincial executive. Everyone who would like to see provincial government not only responsible but also free should hope

that this defect in the organisation of provincial government will be remedied by the Statutory Commission and that the provincial legislatures will consist of two Chambers.

It is easy indeed to prove the uselessness of Second Chambers—in logic. The Abbe Sieyès' dilemma that a Second Chamber if it is a copy of the first is unnecessary and if it is different from it, dangerous, cannot be escaped from—in logic. But fortunately logic is not the presiding genius of political life. Political practice is a surer guide and that is all in favour of Second Chambers.

If Second Chambers are to fulfil their functions of supplementing the representation of a revising Chamber, and as a check on legislative tyranny, they must be as differently constituted as possible from the first Chamber. To make it a replica of the other Chamber would be to rob it of the major part of its utility. Most Second Chambers are composed as differently as possible from the corresponding First Chamber. If elections there must be, the Second Chamber is elected by a process of indirect election as in France and in the U.S.A. before 1913. Or the device of nomination may be used as it is in Canada. Against all rules this system seems to have worked well if we are to be persuaded by the argument of a recent Canadian writer, Mr. Mackay, who in his "Unreformed Senate of Canada" has proved that the nominated Senate

of Canada has rendered great and memorable service to the cause of parliamentary liberty, the rights of minorities and social progress and that there is no need for change. Here in India as the principle of election has been used for the constitution of the Council of State it may not be feasible to use nomination as the sole means of constituting the provincial Second Chambers. The principle of election mellowed by nomination would seem to be the most appropriate method of constituting Second Chambers in India. It would conduce to the independence of these nominated members—or rather their reputation for independence which is the more important and the more difficult matter if they were nominated for life or for periods of 15—20 years. The number must also be fixed so that the independence of the Second Chamber may be secured. In India it would be better to let the Governor-General or the Governor nominate rather than the Ministry of the day. Through the door of nomination the selecting authority should see to it that those who enter are men eminent for general political and legislative capacity and are not mere notables. The selective capacity must be highly developed in the selecting authorities if our Second Chambers are to contain the cream of Indian legislative talent.

The franchise for the election to Second Chambers must be as different as possible from that of the First Chamber. The rules made under the Reforms

Act attempted this differentiation by prescribing proportional representation. But in a vast area like that of the usual Indian province, where the candidates available are not outstanding familiar figures, P.R. becomes a more unreal method of election than it need be. Better than P.R. as a method of constituting Second Chambers would be the representation of professions, associations, occupations and interests. But whatever be the system of election adopted, care should be taken that the Second Chamber is not a mere copy of or a more popular Chamber than the first as has proved to be the case in Australia to-day. Those who turn up their noses at a nominated Second Chamber may learn a lesson from the experience of Canada which in 1856 displaced the system of nomination by that of election and was forced to go back to the system of nomination in 1864 as in the interval the Senate had become the stronger of the two chambers. The size of the Second Chambers must be adequate to the purpose for which they are required. A small legislature hardly conduces to good debate nor does it secure the selection of legislative or executive talent. The number of the present Council of State is utterly disproportionate to the size and population of the country. It must be certainly doubled. A Central Second Chamber of 150 members for India cannot be considered overgrown. And in the provinces 75 could not be considered disproportionately large.

As important as the question of the constitution of a Second Chamber is the question of what powers it shall be endowed with. If it is to perform its function of a revising and checking Chamber it must in the main be endowed with co-ordinate and equal powers. It must have the same power if not the same powers as the Senate of the U.S.A. or France. It must have the right of amending and rejecting all bills, including money bills. Only the right of initiating money bills should not be given to it as that right is rightly given in modern constitutions to the Chamber that is representative of the poorer classes of the people. Although the Second Chamber may have equal legal power with the other branch of the legislature, it can never have equal political power. It would be a negation of all responsibility to make the executive responsible to any extent to an unelected Chamber. While it may frequently be useful and sometimes even necessary to choose ministers from among its members, they must hold office only at the pleasure of the other house. The utmost that can be allowed a Second Chamber is to allow it to secure by its action that the popular Chamber really possesses the confidence of the electorate.

VIII

The Franchise.

It is not an accident that in these articles the consideration of the question of the Franchise should come up after the question of the constitution of provincial and central government has been dealt with. The particular place given to Franchise in these discussions is based upon a definite political theory. It is based upon the principle that the Franchise is only a means to government and to good government at that. What the Franchise will be will depend on what kind of government we are to have. The Franchise is not so much a right as a duty or a public service. There is no such thing as a natural right to the vote except in the brains of ideologues. The right to vote is a political right granted by governments to their people at definite periods in their history. As Barnave says, "the right to vote is not a right but a function." And it was granted in history not so much to realise the personality of the citizen as to further the ends of the State. King Edward I, when he called upon the freemen of the counties and towns of England to elect their representatives, did so not because he wanted them to realise their manhood but because he felt it was necessary

in the particular circumstances in which he was placed for the better government of England. The fact that the franchise had to be granted and had to be extended from time to time is conclusive against its being construed as a right. Even the Abbe Sieyes drew a distinction between passive and negative civil rights like the right to life, liberty, and property, which all citizens must enjoy, and active positive political rights—like the right to vote—which only those competent to exercise it should be allowed to possess. More than one leader of revolutionary opinion during the constitutional debates of the French Revolution argued for the imposition of a property qualification. The grant or extension of the franchise in India must be regulated solely by the consideration of the better Government of India—of course, according to the ways of freedom.

The Indian franchise system under the Reforms Act has been built on this principle. The authors of the Report on Indian Constitutional Reforms stated regarding their franchise proposals "that they must in fact measure the number of persons who can in the different parts of the country be reasonably entrusted with the duties of citizenship" and that "they must ascertain what sort of franchise will be suited to local conditions." Starting from this point they advocated in view of the poverty of the population, their ignorance, their lack of political experience, a restricted franchise with property quali-

fications. Following their lead the Southborough Committee on the Franchise presented proposals subsequently embodied in the Franchise rules made under the Act by the Government of India requiring the possession of certain property qualifications as evidenced by the payment of land revenue, rent or local rates in rural areas, or of income-tax generally. Even as property goes in India, it is a fairly low property qualification on the whole. And one of the questions that will have to be tackled by the Statutory Commission is whether the time has come for a lowering of the franchise.

The cry for a still further lowering of the Franchise proceeds from two opposite camps. There is the advanced Indian politician who would like something very near manhood suffrage introduced. There is on the other side the candid friend of India who would make further political advance depend on the electorate becoming much more proportionate to the population than it is at present. I have already answered the argument of the former class who believe that the vote is a good thing in itself. If a vote is a means to good government and not an end in itself, then India has both for the Provincial Councils and the Central Legislature a franchise as low as can be desired. Not that I am opposed in principle to a still further lowering of the franchise. Only, in view of the ignorance and social dependence of the masses we cannot be sure

of getting a free and independent electorate. And universal suffrage has before now been worked in the interests of absolutism as in France under Napoleon III and in Germany before the war. It is true that the proportion of the electorate to the population is a little above 3% at present. But even with the present franchise system this proportion could be increased, the number of voters could be considerably increased, if the organisation of the registration of votes were more efficient than it is. The fact that the number of votes for the 1926 election was about double that of the number of votes in 1923, which again doubled that of the first elections, shows that the possibilities of registration have not been exhausted. Anyone who has been a candidate at elections knows what large numbers of qualified voters go unregistered. The Government, servile to English traditions in this as in other matters, expects the candidates and party organizations to see to the proper registration of voters, forgetful of the fact that candidates have to deal with territorially large constituencies and that party organisation is in an inchoate condition. Sir Robert Peel's famous cry *Register, Register, Register*, would fall on deaf ears in India. The Government should, in the circumstances of India, see to the proper and complete registration of voters. They make up a census of India for certain political purposes—they might see to the proper registration

of voters for certain other political purposes, i.e., the securing of really representative assemblies as one of the institutions of government. And on this subject of the attitude of government to elections one who has had to do as a candidate with three provincial elections and one municipal election might be allowed to urge the view that Government itself should take steps to put down the bribery and corruption at elections which has already become a chronic electoral evil. The sale and purchase of votes which is notorious might be made a cognisable offence. Leaving it to candidates as in England will not do, as they or their agents are equally guilty and equally interested in taking no action.

However that might be, the fact is that the present franchise system has secured fairly representative legislatures for the provinces and the country. The plea that further advance in responsible government must depend on a much greater extension of the electorate, if it is honestly held, must mean that there should be no further advance in responsible government. For although it is not absolutely necessary that a voter should be literate in order to be intelligent—the present writer has met many a voter who could neither read nor write but who could tell what was most necessary for his village, who could distinguish between essentials and non-essentials and who, as the swing of the pendulum in more than one province already has shown can

prove that he cannot be fooled all the time—yet very poor men cannot be expected to be independent or incorruptible or look beyond their nose. As the mediaeval Hungarian maxim had it: *Vota sunt ponderanda*. As for the argument that a lowering of the franchise would tend to make the legislatures more representative of the people it would be only to a quantitative extent, not in a more real manner. To make our legislatures representative of more people is not to make them more representative of the people. For if true representation depended on the number of people represented, no representation could be said to be complete until and unless every individual citizen was represented. This is clearly impossible for it is only the majority that get represented as the result of any election and the minority go unrepresented. In discussions on representation it is often forgotten that it is not the individual citizen but the nation that has to be represented. For when you come to think of it, as the great German political critic, Frantz, points out, no one can represent another. A Representative Assembly should be representative of the nation or the people. It should be representative of the chief classes, communities, interests, occupations, professions, activities of the people. A representative assembly should be a sample, a miniature presentment of the country, it should be a picture of the

people where each main interest could be represented proportionate to its importance in the life of the people. It is not representative of every interest or section but of those that constitute the life of the people. While including members of the major and minor communities, it is not representative of every petty, sectional, vegetative interest. For a representative assembly is representative of the active life of a people not of dead or moribund particles. The best system of representation in the world will, according to the quantitative theory of representation, be incomplete. All that is wanted to ensure the constitution of representative assembly is that the main interests of the country ought to be represented. And looking at the Provincial Councils and the Indian Legislature no one can deny that they are fairly representative of India—representative of its chief communities, interests, professions and activities, although certain minorities might get more efficient representation. Merely adding to the numbers of voters will not make them more representative than they are at present. To justify further advance in responsible government, adding to the number of the present classes of voters is not necessary. The advocates of this theory really overreach themselves. For if responsibility depends on popular sovereignty then they must forthwith enfranchise the whole people of India, whatever their political competence. For according to them

a responsible executive can only exist with an assembly quantitatively and not merely qualitatively representative of the people. From this position we would have to proceed to the historical criticism that England did not get responsible government till the Representation of People Act was passed in 1918.

If it is agreed that representative assemblies should be representative only of the people, it will also be allowed that the units of representation ought to be the chief divisions, classes and interests of the people. Of these, territorial divisions are the most important; and electing representatives through and by means of them will be the most usual method of organising elections as it has been the most historical. Local or territorial constituencies would be the best unit of representations for all countries and peoples, provided one condition obtains. And that is, that national unity has been attained. For then the points of difference being reduced to a minimum, almost to a vanishing point, a representative would represent not only his district or his town, but his country. But if social and religious differences are great, local or territorial representation would leave large numbers of the people wholly unrepresented in the national assembly. Even in the countries whose national unity has been an assured achievement for centuries, local or territorial representation has been found defective,

huge minorities going unrepresented at every election, and various remedies have been suggested like proportional representation, plural voting, indirect election. Here in India where national unity is far from being real and assured, local or territorial representation would leave many classes and communities of the people wholly unrepresented. Even in Europe Sismondi complained "We are attached too exclusively to local representation." And the device used here in India to supply the deficiencies of representation through local or territorial divisions is communal representation.

One of the battles in the constitutional campaign of the immediate future in this country will rage round the question of communal representation. It is so easy to argue against it. It is novel, almost unique, it is obviously an obstacle to national unity, it preserves differences that ought to be obliterated. Now, no one can defend communal representation, *qua* communal representation. But on account of the incomplete national unification of the country one is obliged to resort to it. The facts of electoral history have proved that it is communal considerations that in the main determine elections in rural parts. A Hindu has not learnt to look upon a Muhammadan or Christian as his political brother. And even amongst Hindus, here in the South, a Reddy will usually vote for a Reddy and a Kamma will vote for Kamma. And small blame to him if he does so.

In his political ignorance and inexperience he takes the line of least resistance, the line which requires the least trouble of thought or choice, the line of communal consideration. If the representation of the people in a legislature is to be real and not illusory we do not see how we can escape communal representation. The analogy of certain countries is often pressed into the service of the argument against the continuance of communal representation in India. There are Catholics and Protestants in England and Germany divided by the differences of religion as definite as those that divide Hindus from Muslims in India; and still the Catholic minority do not need communal representation. Allowing for the moment for the sake of argument that the religious differences are as great in the former case as in the latter, can any one deny that there are other points in common between the two communities in the former pair which do not exist in the latter. Between a Catholic and a Protestant there comes no doubt the dividing line of religion—although it must be remembered that it is not so fundamental as that between a Hindu and a Mussalman. But the points of contact are numerous—their family life and system are the same, their habits of eating, dressing, social intercourse are the same, their life of civilisation and culture are the same, their historical traditions are common. A Catholic and a Protestant in Europe meet at

many points and look away from each other on only one. A Hindu and a Muslim look away from each other most of the time and meet only occasionally. To ask them to meet in the same constituency is to attempt to produce only apparent political unity and to produce a national representation that will no doubt be in accordance with all the rules of representation but will have only missed the purpose of representation.

Of the many hard things said of communal representation few can be sustained. It is said that communal representation is a great obstacle to national unity. This would mean that before communal representation came on the stage of Indian politics, a fair degree of national unity had been attained. Then why did the Mussalmans insist on the introduction of communal representation and why did the Hindus embody it in the famous Lucknow Pact of 1917? The present communal tension is attributed to communal representation. No one can deny the tension but can it fairly be attributed to communal representation? Is it not to be attributed to the devolution of political power from British rulers to the people and the natural desire of each minority community to consolidate its position? And how is communal representation anti-national? Often in discussions on communal representation it is forgotten that it is only a means of constituting representative assemblies. It has not

prevented the members of these representative assemblies, after getting into them by the door of communal representation from joining this or that political party. Christians and Mussalmans are to be found in Swarajist or Nationalist parties in provincial or central legislatures. Communal representation is only a means of securing the representation of certain communities in the legislatures of the country, who, but for it in the present circumstances of the country, would not have found their way to it. And it is not such a unique thing after all. It is found in some of the States of central and south-eastern Europe. And what is the movement towards universal suffrage in England but a movement for the representation of certain communities otherwise unrepresented in Parliament? Why should not the working classes have been satisfied with the representation given by the Reform Acts of 1832, 1867, 1885? Why did they want the lowering of the franchise except to ensure their representation through representatives of their class. What is Proportional Representation in practice but communal representation? These are the English methods of ensuring the representation of certain communities which but for them would go unrepresented. The Indian method is communal representation. All the trouble about communal representation arises from the fact that it is looked upon as something more than a device of representation.

Communal representation has however got on the nerves of a certain class of political critics. One suspects the discontent may be purely tactical. As it is now admitted that the Hindu acceptance of the Lucknow Pact was tactics to secure a unity that might impress the English rulers, so one might legitimately argue that the present movement against communal representation may be tactics to produce an impression of national unity that might convince. And so communal representation must go. But the anxiety remains that all might not be well with the representation of minorities. And so the opponents of communal representation advocate joint electorates with reservation of seats. But there is the fear that the members of minorities secured by joint electorate with reservation of seats would be more acceptable to the majority in the joint electorate than representative of the minority—a fear which was present to the mind of Lord Morley when as Chief Secretary for Ireland he was concerned with the representation of Catholics and came to be acquainted with the class of “shonies”, *i.e.*, Catholics who would be more acceptable to the Protestant majority than representative of Catholics. If communal representation is such an ugly thing and a case has to be made against it in India, why should not the experiment be tried of trying joint electorates with communal representation working side by side with it. This would no

doubt give more than one vote to minority communities. But why should the majority communities grudge minorities additional safeguards? Plural voting is not such an abomination. J. S. Mill, a Radical if ever there was one, advocated it as a means of tempering the crudities of democratic representation. Or communal representation may be given in those localities where members of a minority community predominate the same minority in other localities being satisfied with the ordinary general vote. All the national inspiration and co-operation that minorities are expected to get from joint electorates they will get. And incidentally it will be proved whether communal electorates may not be done away with.

In conclusion, some minor reforms may be urged in the present franchise system of the country. As the membership of the different legislatures must be increased, the registration of voters, I must repeat, must be made by Government—no one else can do it—much more efficient and complete than it is. In view of the fact that a large number of *pattas* in land are joint *pattas* it is a question whether joint undivided owners may not be each given a vote. Large numbers of men are thus left unenfranchised and the anomaly exists that the larger the landed property the less political power it gives. The present system of district representation is what the French call *scrutin de liste*,

the voters in a district having as many votes as members allotted to it. In view of the large size of the Indian district, the difficulty of communication, the scarcity of local organs of public opinion I would suggest that the other system *scrutin d'arrondissement* may be given a trial in districts, each district being divided into wards according to the number of members it has to elect. This device would not be required in towns. As the system of nomination will have to go from the constitution of the popular chambers of legislature, the representation of depressed classes would present a difficulty. As property qualifications would not enfranchise more than a very small number, the suggestion that representation through associations—organised, with sufficient membership, financed and registered—may be given them is worthy of consideration. And, finally, the numbers of the provincial and central legislatures must be increased in keeping with the size of the areas and population they serve. Doubling their present number would not be undue expansion. And this discussion on the franchise may well end with the observation, worthy of being repeated, that franchise systems are a means to a particular end which is representation of the people in legislative assemblies. They have little or nothing to do with the promotion of national unity or communal peace, or the parliamentary process. Franchise systems are the consequence not the cause of these other things.

IX

The Civil Services.

“Every sort of government” said Burke “ought to have its administration correspondent to its legislature. If it should be otherwise, things would fall into a hideous disorder.” We have seen the disorder into which Indian government has fallen from the constitution of the legislature and the executive being based on two different principles. But it is not enough, if the principle of election and of responsibility are to govern the constitution of the legislature, to make the constitution of the supreme executive conform to these principles and constitute the supreme executive in the Ministry whether in the provinces or at the central government from among the members of an elected legislature and responsible to that legislature. The same principles must inspire and inform the constitution of the executive all along the line. Obviously, the principle of election cannot govern the constitution of any but the supreme and topmost part of the executive. To produce harmony between the executive and the legislature it is enough if the supreme executive which has to formulate policy and give the direction to administration is governed by the principle of election. But the other principle of responsi-

bility, must inform the subordinate executive if there is to be harmony between executive and legislature in a system of responsible government. Not that the responsibility must be direct or immediate. All that is required of a subordinate executive in a responsible and popular government is that it should be ultimately responsible to the supreme executive. The needs of efficient organization will not allow the subordinate executive to be servilely dependent on and tied hand and foot to the supreme executive. All that is required in responsible government is that the subordinate executive shall carry out the policy of the supreme executive and shall be subject to the discipline of the members of the supreme executive to whom their department belongs. It does not mean that the members of the subordinate executive shall depend for their salary or pension or retention in office on the sweet will and pleasure of their political heads. But it does mean that the choice of the permanent head of the department, the transfer of the higher officials of the department, shall vest with the political head of that department. The Civil Service under a responsible government must be permanent, but it need not, and must not, be independent.

What place will these principles allow the civil services in India? How will the civil services fare under these principles? Of the two branches of the civil services in India, the provincial services as

they have been reorganised on the basis of the recommendations of the Lee Commission, offer no difficulty. Provided their recruitment and the safeguarding of their interests is placed with a Provincial Services Commission, they can soon be brought within the government of the principles that ought to regulate the relations between the subordinate executive and the Ministry in a responsible government. But it is the services that are recruited by the Secretary of State for India and whose terms and privileges of service are guaranteed by him according to the Act of 1919 that offer a serious difficulty. They offer a very serious obstacle to the immediate grant of "provincial autonomy". For, in the higher grades of the departments of law and order, police, land revenue administration, civil servants appointed by an outside authority form the majority. Without believing the wild rumours about the disloyalty of I.C.S. officers to their ministers and while endorsing the view of the majority of the Reforms Enquiry Committee of 1923 that on the whole the I.C.S. officials have worked as loyal subordinates of their Ministerial superiors, one cannot dismiss the fear that one of the stock excuses of an incapable Minister will be that members of the All-India services are subordinate to and dependent on an outside authority. The present system which places a Secretary under a Minister to whose jurisdiction he is not amenable is as Prof. Keith

observes "clearly incompatible with ministerial responsibility". When it is also remembered that these Secretaries have the right of audience with the Governor and that even the postings of the members of the All-India Services are vested in the Governor by the Instrument of Instructions, one may realise how the present relations between members of the All-India Services and Ministers are opposed to the principles and practice of parliamentary government.

The only way out of this difficulty is the Indianisation of the Services—Indianisation not only and not so much in regard to colour or nationality, but in regard to recruitment and organisation. The declared policy of Parliament is to provide for "the increasing association of Indians in every branch of Indian administration." It may not be without significance that in the Preamble this policy takes precedence of the policy of developing self-governing institutions, for it is based on the sound view that without a national civil service, national self-government would be a precarious achievement. It must be acknowledged that genuine attempts have been made to speed up Indianisation in recent years. The recommendations of the Lee Commission on the Public services of India go a good way to achieve the object of Indianisation. But the terms of reference of this Commission did not place

before it the real objective, which was not Indianisation in general but Indianisation with a view to meeting the eventuality of full responsible government in the provinces or of partial responsibility in the central government. Such a reference was perhaps premature in 1923. But the Statutory Commission will have to consider this important problem. If anything near full provincial self-government is to be granted to any province, recruitment to the departments administering the subjects transferred to a responsible executive must be taken away from the hands of the Secretary of State. Recruitment in England to the departments of a subject of administration must be stopped immediately after the decision to transfer that subject has been determined upon. Provincial autonomy must go hand in hand with the provincialisation of the services. Similarly in the central government, if the principle of responsibility is to be introduced, the rate of indianisation by recruitment in India must be accelerated so that within a very few years of the decision to introduce responsibility in a department of a central government, more than 50% of the superior grades of the services of that department shall be recruited in India and made responsible to an Indian authority.

The argument against the rapid Indianisation of the services resolves itself into the fear expressed by Lord Birkenhead more than once that the services

of Englishmen would be a necessity, as long as the present disunity of the people and communal discords and suspicion obtain. But if that were the dominating consideration of Indian government, the policy of developing self-governing institutions in India should not have been thought of at all. If responsible government is to be a reality, the services should be Indian in recruitment and organisation. And statesmanship is not so bankrupt as to be frightened by the results of the incomplete unification of the country. If Indianisation must be guarded against degenerating into communal tyranny, care could be taken that no community or communities are allowed to monopolise the services. A proper distribution of services among the different competent communities, paramount regard being paid to efficiency, will rob Indianisation of the major part of its terrors. Lord Cromer's famous policy of appointing a native wherever one can and an Englishman only where one must, might, well be commended to the governing authorities of India. The fact that within two or three years of each other the Public Services Commission of 1917, the authors of the Report on Indian Constitutional Reforms, and the Lee Commission, recommended progressively increasing rates of Indianisation, warrants one in thinking that the Statutory Commission will be obliged in view of the objective of Indian policy to recommend a very much more rapid rate, than

has been contemplated till now. No one will gainsay the need for taking all possible care that indianisation does not bring inefficiency in its train. One may agree with the authors of the Report on Indian Constitutional Reforms that "the qualities of courage, leadership, decision, fixity of purpose, detached judgment, and integrity" will be as necessary in Indianised services as ever before, and yet believe that they can be secured under Indianisation. The old racial theory that certain qualities are inherent in certain peoples and cannot be acquired by any process of education or training would make the prospect of Indian reform a dreary and arid waste and rob Indian education of all its faith and hope. These great qualities of command and leadership can be acquired by the Indian administrators of the future. Improvement of the higher grades of education so that room may be found for the training of character and for proficiency in games, especially those that bring out the qualities referred to and insistence on character rather than ability to pass examinations, are means of ensuring the possession of the qualities of good administrators to the Indian services. Even a period of probation in England may, in case of recruits to the higher services, be insisted on. All care must be taken to ensure the quality of the indianised services. But that cannot be a reason for refusing Indianisation. Nor need Indianisation be taken to mean the total exclusion of the Englishman from

the superior civil services of India. What I have insisted on is that the recruitment and control of the services must be in the hands of Indian authorities. And so long as adventure and sport are to be found in India, even Englishmen will be attracted to the Indian services. And because Indian ministers like English ministers cannot afford to be independent of the help, co-operation, and guidance of the permanent civil service, a career in that service will not cease to attract Englishmen of character, ability, and administrative statesmanship.

Connected with the question of the relation of the services to the popular ministries of the future is that of the need for the presence of members of the services in the legislatures of a responsible system. The reason why official Secretaries are being retained in the present legislatures is that these latter should benefit by the presence of men with administrative experience in which the members of the Legislature would be lacking. But it has not led to what is even more important—the training of a good proportion of members of the legislature in the business of administration. Although the appointment of Council Secretaries corresponding to parliamentary Under Secretaries was recommended by the authors of the Reforms Act and by the Joint Committee of Parliament, this has been left to the discretion of local governments and Councils. The fact that few local

governments have resorted to these appointments and the few that have done so have attached low salaries to them—in Madras it was about Rs. 500 a month—shows what importance they attach to this device of bringing legislation into touch with administration. It would serve this purpose if to each Minister of the future were attached a Parliamentary Secretary with a salary of at least Rs. 1,000 a month and an Under Secretary with a salary of Rs. 500. Such a system would have the additional advantage of helping to consolidate the party system. Human nature being what it is, other adhesives than principle are necessary to keep a party together. The appointment of a dozen young men of a party which carries with it the expectation of at least twenty more to these places would make attachment to party in Indian legislatures much less precarious than it is. When one thinks of the number of Secretaries and Under Secretaries of all kinds in the English Parliament and the patronage which a Government is able to dispose of to its members, one wonders at the poor resources of a Ministry in India and is hardly surprised at the little progress made in this country by the two party system so necessary for the development of parliamentary government. In view of the importance of establishing this means of consolidating the party system and of bringing the legislature into touch with administration, it may well be considered whether

it would not be necessary to provide for this device in the Act. It is not wise to leave such things to the wisdom of local governments or legislatures. Obsessed by political considerations, by the needs of the moment or of economy, they do not look beyond sheer expediency. The lowering of the salary of the Presidents of certain Councils, the election of other Presidents being contested, show that the need for legislating the devices of parliamentary government into effect for a people new to the business of parliamentary government and disdainful of conventions which cannot be proved to be directly useful, is imperative. It goes without argument that in the wholly elected provincial and central legislatures of the future the nominated officials will find no place and their place will be taken by non-official Secretaries and Under Secretaries.

X

The Judiciary and the Reforms.

It is a curious fact that the Report on Indian Constitutional Reform has not a word to say on the position of the Judiciary in the system of partial responsible government that the authors contemplated. The Government of India Act of 1919 makes no reference to it. The position of the Courts and their relation with the other powers in the State are determined by the Government of India Act of 1915, and previous Acts. I do not think that the position of the Judiciary in a system of responsible Government was ever considered by the authors of the Reforms Act. But responsible government is free government, and it is worth anything only to the extent to which it is a free government. The independence of the Judiciary-*vis-à-vis* the Executive and the Legislature must be organised. "Were the power of judging joined with the legislature" said Montesquieu who laid down the law on the matter "the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Were it joined to the executive power, the judge may behave with all the violence of an oppressor." In English constitutional practice, the position of the judiciary in a

system of free government is described as the Rule of Law, a conception with the late Professor Dicey made famous and familiar throughout the English-speaking world. Apart from the defence of the rights of the individual against other individuals the Rule of Law defends the individual against the tyranny of the Executive, subjects every executive official to the jurisdiction of the Law and of the ordinary law courts and ordains that official service or sanction shall afford no immunity to executive officials against the legal consequences of their actions even when performed in an official capacity.

Does the Rule of Law apply in India? With certain large exceptions it may be said that the Rule of Law does obtain in India. The individual is not deprived of his liberty except by due process of law. A writ of Habeas Corpus will release a man from unlawful custody. An official can be sued for any one of his official acts. The Rule of Law does obtain in India in spite of the fact that recent legislation has authorised the Executive to deprive citizens of their liberty without a trial in an ordinary Court of Law. These laws may be oppressive, tyrannical laws, but they are not invalid. For all their political vulnerability, they are legally valid. They are the law of the land. The courts, the highest in the land, the most independent of them, have recognised them as laws. They are like the Defence of Realm Acts or the suspension of the

Habeas Corpus Act in England. One may deny the need for them, one cannot deny that they form part of "the due process of law".

It is not however these temporary aberrations from the ordinary law of the land that form serious defections from the Rule of Law in India. It is rather the normal, ordinary, legal escapes of certain acts of the executive from the jurisdiction of the ordinary courts of the country that prove to be the most important challenge to the principles and practice of the rule of law. A whole crop of civil suits is gathered and disposed of in other places than the Courts of Law. The High Courts and subordinate Courts are forbidden to have or exercise "any original jurisdiction in any matter concerning the revenue or concerning any act ordered or done in collection thereof according to the usage and practice of the country, or the law for the time being in force." When it is explained that this prohibition refers not only to the collection of land revenue but to the collection of other kinds of revenue like income-tax one realises what a large slice of executive activity has been taken away from the jurisdiction of the Courts of Law and put under the purview of executive authorities. In other words so far as the administration of revenue in India goes, the rule of Law has been displaced by a *loi administratif*. It must be acknowledged that the jurisdiction of Civil Courts is not altogether excluded. Orders of a

Revenue authority which are *ultra vires* may be treated as a nullity or declared as such by the Civil Courts and the Income Tax Act of 1922 does allow the High Courts to decide questions of law in connection with income-tax. And in regard to this *loi administratif* of revenue authorities, in view of the little discontent with the system in India and the legal safeguards that already exist and in view of the growth of *loi administratif* in England itself it is doubtful whether the Statutory Commission will feel called upon to introduce radical changes in the present system.

Another important, though not very large, proportion of executive activity has been put outside the jurisdiction of the Courts in this country. According to Section 110 (a) of the Government of India Act high officials like the Governor-General, Governors, Lieutenant Governors, Commissioners of Provinces and members of the Executive Council, Ministers and Judges of the High Courts shall not be subject to the original jurisdiction of any High Court by reason of anything counselled, ordered, or done by any of them in his public capacity. This legal protection given to the executive acts of important officials is certainly a derogation from the jurisdiction of the courts and to that extent is a modification of the Rule of Law. It is true these officials are not exempted from the jurisdiction of the Courts in England and may be tried before them for

any acts done in this country. But it seems to be a roundabout and expensive way of bringing Indian members of Executive Councils and Ministers and Judges to book. A still more serious infringement of the principle of the Rule of Law is the *carte blanche* that is given to the executive by section 111 of the Government of India Act which says that "the order in writing of the Governor-General in Council for any acts shall, in any proceeding civil or criminal, in any High Court acting in the exercise of this original jurisdiction, be a full justification of the act, except so far as the order extends to any European British subject." Although the section also provides for the trial of such acts in English Courts of law it gives such a large area of executive action exemption from the jurisdiction of the ordinary courts of the country that in theory it looks as if all executive action were exempt from the jurisdiction of the Courts of Law. We may take it that no Governor-General would give this certificate of exemption as a matter of course, but only for great reasons of State. In view, however of the lurid history of "*ragion di Stato*", and as the other ways of guarding the Executive against harassment like Indemnity Acts are available, one cannot but view with grave anxiety the prospect of Section 111 remaining long on the Statute Book of India.

The union of executive with judicial functions in the person of certain subordinate officials is often referred to as an infringement of the principle of separation of powers which is the foundation of the Rule of Law. But if Madison's interpretation of the doctrine of the separation of powers is borne in mind *i. e.*, that the whole of one power should not be exercised by the whole of the authority exercising the whole of another power, the sting is taken away from the union of judicial with executive functions. After all it is only a small portion of the executive that exercises a small portion of judicial functions. And in view of the administrative efficiency that is thereby secured, we may well tolerate what is after all a logical anomaly rather than a constitutional difficulty. The people that tolerate a Lord Chancellor who is a member of the Cabinet and the highest judicial officer of the country and that have been used for centuries to the work of Justices of the Peace is hardly likely to be influenced by an agitation to reduce the magisterial powers of some revenue officers.

More urgent from the standpoint of constitutional development than the question of the separation of judicial from executive functions is that of the establishment of a Supreme Court for India in India. The connection between constitutional development and the establishment of a supreme Court seems to have been suspected, when, soon

after the introduction of the Reforms the question of a Supreme Court for India was brought up for discussion in the Indian Legislative Assembly. As early as March 1922 Dr. Gour (now Sir Hari Singh Gour) brought this question up for discussion for the first time. And since then no session of the Assembly has been allowed to go by without his bringing up the question before the Assembly. It is perhaps unfortunate that a free-lance like Sir Hari Singh Gour should be the sponsor of this reform, for neither Government nor the popular parties have been able to support his advocacy of the establishment of a Supreme Court of India. But in view of the interest that has been aroused over this question in the Assembly and in the country the Statutory Commission will be obliged to deal with it. The arguments in favour of the establishment of such a supreme court are stronger than the argument of expediency by which so far they have been countered. The distance of the judicial committee of the Privy Council which is now the Supreme Court of appeal for India makes it available only for a limited number of litigants. The nervous dependence—natural enough—of the Judicial Committee on the texts of Hindu Law prevent that development of Law by means of judicial decisions in the direction of progress which is one of the glories of the English and American systems of Law. What India wants in its legal life is the hammering

of a Common Law of India out of the decisions of the various High and Subordinate Courts of the country. The reconciliation and harmonising of the conflicting decisions of the High Courts of India is more feasible with a Supreme Court in India than with the distant and comparatively inaccessible Judicial Committee of the Privy Council. Such a Supreme Court would do much more for the legal unification of the country than a Court established outside it. It would do much to promote that legal unity of India which is a concomitant and support of political unity. This Supreme Court also will better build up a body of constitutional law arising out of the conflicts of quasi federal-governments than a Privy Council used only to a unitary constitution.

The independence of the judiciary is in some countries interpreted so as to mean the supremacy of the judiciary. But it is not all free governments that require the supremacy of the judiciary as does that of the U. S. A. The supremacy of Parliament in England and the defence of the Constitution by high Executive authority as in Switzerland shows that here in India we do not need the judiciary to decide questions of conflict of jurisdiction between the provincial and central governments. Least of all do we require in a country like India where the prestige of the legislature has still to grow writs of

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mandamus and injunction orders allowing the judiciary to keep the legislature to a performance of its duties. There are other ways of bringing a peccant legislature to its senses than the interference of the judiciary.

XI

The Army and the Constitution

“So long as India depends for her internal and external security upon the army and navy of the United Kingdom, the measure of self-determination which she enjoys must be inevitably limited”—with this argument, the authors of the Report on Indian Constitutional Reform placed their finger on one of the key-problems of Indian politics. They also reasserted the historical connection between the military and political organization of a State. As is a State so is its army. A despotic State manages with a mercenary force, a State built upon caste requires caste armies, a State founded on conquest reflects in its army the racial domination which is its cause and result. As soon as France burst the bonds of despotism, one of the first things that it did was to organise a National Guard for the defence of the nation and the popular government that it set up. And one of the first things that have to be done for India is the organisation of an army that will be built on the principle of nationality and freedom upon which its future constitution is to be based. In the place of the racial armies that the British government has substituted for the caste armies of Hindu

India, there will have to come into existence a national citizen army. The new constitution inspired by the principles of popular freedom cannot be placed in the charge of an army constituted on totally different principles. If the military power is to be a force not standing by itself but the physical foundation of the strength and very existence of the State, it goes without saying that the army must be constituted on the principles on which the general government of the State is constituted. The future army of India must be interested in the maintenance of the future constitution of India. It must be its defender and guardian against all comers from within or from without.

Looking at the Indian army as it is at present constituted, can we say that it can be used as the defence and support of a free and popular government? The future government of India is to be inspired by the principle of nationality. More and more the Indian army has come to be constituted of the so-called fighting races of the North and especially of the North-west. The gradual and progressive disbanding of the Madras regiments, whether it is based on a theory of race (that is as bad biology as it is bad history) or on grounds of economy which has yet to be proved, has made the present Indian army a negation of Indian nationality, actual or potential. The present military policy of the Indian government which dates from the time of Lord Roberts and Lord

Kitchener, attempts to use the Indian army as a mere military machine existing mainly for the defence of the North Western Frontier and of India as a part of the Empire. Such a policy which looks upon the army as an instrument that is to be made as efficient as possible for the end of military defence against aggression from without is hardly consistent with the purpose of political education to the ends of freedom which animates the general policy of the government.

It was the feeling that the policy of the government in regard to military organization was not on all fours with the new spirit of Indian Government which found expression during and immediately after the war, that induced the government to grant King's Commissions to Indians and to throw open the doors of the Royal Military College at Sandhurst to Indian lads at the rate of ten a year and constituted a preparatory military school at Dehra Dun. In answer to repeated requests for a definite attempt to Indianise the higher command in the Army, the late Lord Rawlinson induced the Government to accept his scheme for the eventual complete Indianisation of 8 units of the Indian Army. This scheme, however, in spite of the radical progress it inaugurates, has not found favour with Indian political opinion for obvious reasons. The 8-units system emphasizes a segregation of Indian officers and of Indian units. And the

very reason put forward on behalf of the military authorities that support Lord Rawlinson's system "that these units will form the nucleus from which the army can be nationalised with confidence that the security of the country will not be impaired" is hardly calculated to allay the suspicion that it is not the real military education of the people but military security that is the determining consideration of Indian policy. To placate Indian discontent on this matter as expressed in the Indian Legislative Assembly in 1925, the Skeen Committee was appointed to report on the question "by what measures it may be possible to improve upon the present supply of Indian candidates for the King's Commissions both in regard to number and quality." The Committee recommended that "(1) in 1928 the number of vacancies—at present 10—allotted to Indians at Sandhurst should be doubled and thereafter should be increased progressively until a military College on the lines of Sandhurst is established in India; (2) that the Artillery, Engineer, Signal, Tank, and Air arms should be made accessible to Indian youth; (3) that in 1933 a military College with 100 candidates to start with should be established in India; (4) that 20 vacancies should continue to be reserved for Indian cadets at Sandhurst. The Skeen Committee made also the unambiguous recommendation that the 8-units should be abandoned and King's Indian Commissioned Officers

should be eligible to be posted to any Indian unit of the Indian Army. It is a matter of recent notoriety that the main recommendations of the Committee have been turned down by the ultimate governmental authority for India. The 8-units system is the one to which the Government have declared themselves bound. Although the proposal to establish an Indian Sandhurst has been turned down, the number of places reserved for Indian cadets at Sandhurst has been doubled and opportunities for training as Artillery and Air Officers are to be thrown open. We may agree with Indian political opinion that these concessions are unsatisfactory and incomplete and still welcome them as steps, halting and hesitating no doubt, but still taking us some way to the end in view. The decisions of Government in India are facts, like *Jusus naturae*, against which it is useless to knock one's head and the part of statesmanship is, while declaring one's dissatisfaction, to squeeze the best results even out of unpromising concessions.

But the scheme of an Indianised cadre of officers is only a part and a small part of the scheme of a national army for India. And we need not regret the slow process of Indianisation of officers in view of the present incompletely Indian character of the Indian Army. The Indian Army is recruited only from a few races in the North, some of them hardly Indian. This is a more serious negation of the principles of the Indian constitution than the

incomplete Indianisation of Army officers. What the new Indian constitution requires is in the first place a national first line professional army. And by national, we mean, in the present time when a nation is in the making, that which is representative of the people and of the country. The Indian army, as it is at present constituted, does not seek recruitment from a number of great communities in the Dekhan and Southern India which till recently did furnish contingents who gave good military account of themselves. It is one of the ironies of Indian history that the peoples of the South and the Dekhan who furnished the armies with which the British empire was founded, should on the *ipse dixit* of Commanders-in-Chief who knew and were fond of Northern Indian troops, be now classified among the non-military peoples from which the Indian army should not be recruited. This policy of demilitarising whole provinces and whole communities like the Mahrattas of the Dekhan and the Christians and depressed classes of the south is a military defect, and a political blunder. It is a military defect, for many qualities go to make a good soldier. And the patience and intelligence and fidelity of the Madras Sepoy may not be superfluous in the Indian army. And wars are not won only by the army at the front. The best army in the world may collapse if the home front breaks. During every one of his campaigns Napoleon used to be obsessed by the thought "What

is Paris saying "What is Paris thinking", and during the last war we saw and realised the influence of propaganda in breaking civilian morale. In India what support from civilian morale can the Indian army expect in any war in which it may be engaged? The demilitarised parts of India which have not heard the drum beat or seen the march past of their own regiments for the past 20 years cannot be expected to be interested in the fortunes of an army to which they have not contributed a single sepoy. And if the high military command expects to win any great war without civilian morale backing it in the greater part of India, they are committing the kind of mistake for which retribution will not be theirs alone. An army, as every great commander has known and believed, does not win a war by itself. And to look upon an army, as a mere engine of war is to shut one's eye to the human element in war, which no government has done with impunity.

The present policy of demilitarising whole provinces and peoples is also bad politics. How can we expect the political classes to be interested in and sympathetic towards the Indian army when the preponderant majority of them belong to classes which are not allowed to furnish recruits to it? In the Indian Legislative Assembly, for instance, not more than half-a-dozen members belong to the so-called military classes. And it is not fanciful to say that much of the opposition to the expenditure

on the army is due to the fact that the Indian army seems a remote and other-worldly interest to the bulk of the members. A Legislative Assembly representative of the country as the present Indian Legislative Assembly and an army so unrepresentative of the people as the Indian army is, cannot be expected to hit it off. A government which claims to realise the idea of nationality and democracy cannot exist under the aegis of an army which is constituted as a mere military machine and on the theory of race. Such a government and such an army are bound to come into conflict with each other, and, as the army possesses the physical power, there can be no doubt which will succumb to the other. To say that the Indian Territorial force offers opportunities for military service to classes that cannot be recruited into the Indian army does not answer the question we have asked. There is difference in privilege, prestige and purpose between the regular army and the territorial force, and racial discrimination which is fleeing from every department of Indian government cannot be allowed to take refuge in the army. And the Territorial force would have to be many times larger than the 20,000 or 30,000 which is the maximum scope for its development even after the recent step in expansion, if the military education of the people is to make great progress.

A much more generous and courageous policy in regard to the military education of the people of this country than the hesitant and halting steps that have been taken in recent times is what the needs of the country and the people require. Not that the impartial critic will deny praise to the authors of the progress already achieved. For that, as we pointed out, was revolutionary. But now that the Rubicon of Indian military policy has been crossed why should the march be slow and halting? It is true one cannot be as radical in military as in civil policy. A mistake in civil administration can be retrieved, a military false step might lead to complete and ultimate disaster. But no one is asking that the Indian army should be immediately Indianised. All that the Skeen Committee wanted was that in 25 years from now, half the total cadre of the Indian army should be Indian. And it is difficult to resist the view, that if you spread your net wide enough and went about it with a will to success, you can find among the 300 millions of India 30 and eventually 100 military cadets to bring about this extent of Indianisation. Of course, there is the view with which the authorities seem to be obsessed *i.e.* that such an Indianised command may become a danger to the security of the empire. This fear is based on an assumption of Indian nationality which does not exist and which people who make use of this argument dispute in other

controversy. And it can be dispelled by the facts of Indian life. The old Roman maxim of "divide and rule" can be used in the cause of the highest state-manship. The forces of evil—of hostility, of possible treachery, of fanaticism—could be divided and ruled. The system of checks and balances can be pressed into the service of every forward step in India. Provided military service is evenly distributed among the various provinces, and among the different communities of India, and no one corps is pampered as the Bengal army was, on the eve of the mutiny, the policy of Indianising and nationalising the army need have no terrors for the strictest advocate of military security. It is the present policy of exclusions and suspicions that is fraught with the greatest danger to India and the Empire. Anyway, it is thoroughly inconsistent with the principle by which the constitution that is in the making for India will be animated.

XII

The Indian States and the Reforms.

Although the subject of the constitutional reforms we have been discussing is British India it is impossible as the authors of the Report on Indian Constitutional Reforms acknowledge "to deal with the constitutional position in British India without also considering the problems presented by the Native States." The geographical economic and political connection of these States with the rest of India make it impossible for us to treat them as an irrelevance in any consideration of the political progress of India. Nor can the movement towards national unity and self-government be a success if as much as one third of the territory and population of India were out of it. Although the Indian Statutory Commission has not been called upon to deal with this problem of the position of Indian States in a future self-governing India and although even the recently constituted Indian States Enquiry Committee does not feel disposed to deal with it, it is difficult as the *Times* acknowledges in a recent article to refuse to deal with it. The Indian princes themselves, to judge from the recent pronouncements of representatives of their order like the Maharajah of Alwar, seem to be conscious that it would be best for all concerned to take up

the consideration of this question of the position of the Indian States *vis-a-vis* a self-governing British India.

The problem is a difficult one for two reasons. One of them is the political relations of the Indian States with the Government of India. Treaties, sanads and other kinds of more or less voluntary agreements have been concluded between the British Government in India and individual Indian States. Now the British Government in India when these agreements were concluded was constituted in a particular manner. It was a British Government responsible to the Parliament and people of Great Britain. The Government of India of the future is to become more and more responsible to the people of India. Can the Indian States be called upon to recognize the future popular Government of India as the legitimate successor of the Government with which they concluded their treaties or agreements. That is one aspect of the problem of the relations of the Indian States with a future self-governing British India. The other part of the problem arises from the fact of the unequal political and general development of the Indian States as among themselves, and especially in comparison with most of the provinces of British India. In regard to constitutional progress, the best of the Indian States like Mysore are miles behind any of the provinces struggling

with the difficulties of dyarchy. The very political theory upon which the constitution of the government of an Indian State is based is poles apart from the political theory upon which the Reforms of 1919 in British India are based. "The Head of the State in Mysore" according to the *Report on Constitutional Development in Mysore* "is the supreme executive head as well as the source (and sanction) of law . . . and represents the people directly and primarily in his person . . . as the symbol of the Dharma or the Law in hereditary transmission and succession." This theory which may be taken to be the basis of the government of all Indian States has little in common with that upon which responsible Government in British India is based which is that of responsibility of the rulers to the people whether in India or in England. And as for the other institutions or adjuncts of a free and popular government like a free press, public opinion, higher education, they simply do not exist or are allowed to operate to a very limited extent in most Indian States. And as for general, social and economic progress, there are few Indian States like Mysore that can be placed on a level with any of the major provinces of British India.

These two aspects of the problem of the Indian States are difficulties which those who desire to solve the problem have to face. Can the Indian

Princes be persuaded to recognize the future popular responsible Government of India as the direct and lawful successor of the present Government of India? It must be confessed that the political theories and public pronouncements of popular leaders in British India on the affairs of Indian States have hardly been calculated to persuade the Indian Princes to accept the succession of authority that may ensue. Already the Indian Princes and their advisers have begun to press into their service the theory that their treaties and other agreements were entered into with the Crown and that therefore their future relations must be with the Crown in England and not with the Government of India. Whatever political reasons there may be for this *démarche*, it would be difficult to find constitutional justification for it. It is true the treaties were concluded with the Crown, but they have always been put into execution by the representatives of the Crown in India and the Princes have always had to deal with the representatives of the Crown in India. And in any future constitution of India within the Empire the supreme Government of India will always be representatives of the Crown in India. There are native Chiefs in the territories of some of the self-governing Dominions who concluded treaties with the Crown at a time when these Dominions were governed as mere colonies. Has it ever been contended on their behalf that

their relations with the Crown should continue as immediate and direct as before and not through the mediacy of the responsible government which succeeded the old government dependent on and responsible to the Crown? And have all the implications of such a theory been thought out? It would mean such a splitting of India into two Indias with different defence organisations and expenditure, different fiscal policies tending to fiscal warfare, different outlook, and development and destiny. That way the progress neither of the Indian States nor of British India lies. It would be in contradiction with the whole tendency of political development in India. That development has reached the end, never reached in Indian history till now, of the establishment of one supreme government in India. The whole secular progress of the country is bound up with the continued existence of that single supreme government in India. The Indian Princes would be doing a very un-Indian thing if they aimed at the establishment of two governments in India. Their wisdom would be shown in accepting the fact and the idea of one supreme government for India and securing for themselves a part and lot in that government—a part and lot which would have to be adequate to their position, their power, and their responsibilities.

The other difficulty that has to be faced in regard to the problem of the Indian States is their unequal development. There is much loose talk about the establishment of a federal system of government in India. But the loosest talk of federation must envisage the equal or the almost equal development of the various States that want to enter into federation. No federation is conceivable till the bulk of Indian States reach politically the same level as British Indian provinces. At present the Indian States present different levels of development from mere autocracy to more or less constitutional monarchy. It would be impossible to bring them and British Indian provinces into any common scheme of government, let alone federation. And common schemes of government apart, it is not good for the constitutional progress of British India that it should have in its flank autocratic and despotic forms of government flourishing. Freedom and self-government require a congenial atmosphere to grow in. An India with two different and opposed forms of government operating near each other will be divided into two warring camps of ideas. British India and the Indian States can practise non-interference in each others' affairs but they cannot keep ideas out. And if the future of India is bound up with nationality freedom, and self-government, the Indian States will have to admit these ideas and their institutions

into their territories. Only then will India's march to freedom and progress be certain and secure. Not until the Indian States are converted to the ideas of freedom and self-government would it be possible to secure the equal and even development of India. Much of this work of conversion will have to be done by the Princes themselves. Much can also be done by the paramount power. The negative policy of non-interference and of asking for only the minimum of good government will no longer do in the new era of political education. If freedom and self-government are good for British India, they are good also for the Indian States. It is up to the paramount power to persuade and convert the States to the new ideal of self-government as it was till now to help them to live by the old ideal of good government. Just as the practice of freedom and self-Government in England and the Dominions has brought these gifts to British India, so their use in British India ought to precipitate their extension into the Indian States.

XIII

The Social Foundations.

If this series of papers had only to do with the mechanics of constitution-making, they would have ended with the last. But a constitution is meant to serve the ends of a people and is not an end in itself. It has to be worked by the people for whom it is constructed not so much as an instrument of production but as a means of self-expression. The spirit of the people must respond to the spirit of their constitution. *Quid leges, sine moribus?* Now the constitution, the principles and outlines of which we have been considering may be said to aim at one compendious object—national self-government. Freedom and nationality are the animating principles of the constitution that is to be for India. And freedom and nationality ought to animate the spirit of the people that are to live by it. Unless a constitution of national self-government is worked by a people who believe in freedom and are imbued with the spirit of nationality it will not serve the ends for which it has been created but will be used to serve purposes that are hostile to freedom and nationality. The spirit of freedom and of national unity ought to inform the private and social life of the people of India, if a constitution based on those ideas is to work towards and realise its end.

National unity is in the making in India—it is not an accomplished fact. The problem of Hindu-Moslem concord is there to prove it. Sincere and strenuous efforts are being made to bring about Hindu-Moslem unity as it is called. But all these efforts of the leaders of the two communities—agreements about music before mosques, about cow-slaughter, about communal representation and the like—seem to be all so formal and legalistic and contractual. It is as if the social contract founded a State. Agreements and contracts can bring about only a negative and temporary kind of unity. They may prevent communal riots. But they will not bring about a lasting, positive and fruitful union. Talking about unity and the means of producing unity will not bring about unity. In fact one is often tempted to hope that the leaders of the two communities would take a holiday from talking and thinking of the problem of unity. The unity that will last and will be fruitful is the unity that people live and not the unity that people are talked or contracted into. If only in each village there was a village club at which Hindus and Moslems could be brought together and live a common social life for an hour or two in the day much more would be done to bring about Hindu-Moslem union than by all the agreements in India. The common people ought to be imbued with the spirit of national unity. They ought to be educated

into it. It is by the long and laborious process of education and not by the short-cut methods of agreements that real national unity can be brought about. The child in the schoolroom, the adult in the village munsiff's office must have the unity of India brought home to them. A map of India, portraits and pictures of Indian works of art, historical figures or monuments, or national institutions might be one means of teaching the growing children the idea of a common country. And as for the adults, it is not so much literacy as education in affairs that is required. The habit of doing things together, the practice of public spirit must become widespread. If Hindu villagers learn to do things together, whatever caste they may belong to, they will learn to do things together with Moslems and members of other creeds. The institutions of the village, the panchayat, the co-operative society must be so organised and so worked that they will train all the people of the village—caste people and untouchables—in the art of doing things together. If instead of preaching unity and contracting the different communities into unity, popular leaders and administrators made the practice of unity easy and regular and a daily habit in common social and political institutions, the real unity of India would be near accomplishment, even if communal riots should flare up now and then out of music before mosques or cow-slaughter, for, then the unity would be general, normal, positive and active.

If political nationality can spring only out of social solidarity and a common social life, political freedom can come only out of the practice of freedom in social and individual life. Men cannot attain to freedom in public life and remain slaves in family or social life. The public law of a State cannot be infused by freedom while the private law of individuals is governed by the spirit of restraint. Free citizens must be free men. If freedom and progress are to be the note of the political life of India, they ought also to be the note of the private life of the individual. Otherwise a constitution of self-government may come to be worked in the interests of Caste as it has been worked in the interests of the Clans in Japan. It is a question therefore whether the reign of Custom, and Caste, and the Dead Hand may be allowed to continue to regulate the family life and law of India. If caste-marriages are alone legitimate according to Hindu law we cannot expect the villager to look beyond his community to the welfare of his province or his country. If the custom of compulsory and equal partition of land is unalterable according to Hindu and Moslem laws of inheritance, we cannot expect the efflorescence of individuality which is one of the springs of political freedom. We may not forget that the Roman Will was at once a cause and a proof of Roman freedom. The English law of primogeniture has supplied

England with a steady flow of political leaders and has driven the younger sons to a life of initiative and enterprise. Laws of marriage or inheritance cannot be matters of indifference to the framers of constitutions of government. How can we hug communal laws (like the family law of Hindus and Mussulmans) to our communal hearts and at the same time argue against communal representation? The question therefore of the reform of Hindu and Mohammedan Law will have to be taken up if the constitutional life of the country is to serve the ends of freedom and progress. It is a pity that Hinduism does not possess one single organisation like the Papacy for Catholics, which could legislate a new opinion and bring institutions into effect by one single and supreme decision. In the absence of such an organisation could not the energy that finds expression in Shuddhi and Sangathan be turned towards the reform of Hindu institutions and to persuade the village populations to accept essential reforms that are necessary to secure individual and social freedom. The reformers have no doubt formidable obstacles to contend with, not the least of which is the cry "Hinduism in danger." But they may take heart of grace from the victory of the Samurais over themselves in Japan and from the revolutionary reforms of contemporary Turkey. The view that these social and legal reforms can wait till Swaraj is obtained, is

born out of sheer laziness, for they can be legislated even in the present legislature, if the popular parties can unite as they are able to unite against the executive.

If constitutions were mere machinery they have only to be set up and set going. But they are the frame-work of a life which has to be lived by men in them. They presuppose therefore a certain character in the men that have to work them and live by them. That character men must bring to them although it is to a certain extent imposed on the men by them. As Duvergier de Hauranne, student of a number of French constitutions "which had their day and ceased to be", says, "No constitutional mechanism can dispense men from the possession of certain qualities and certain virtues and the most wisely planned constitution, the most safely constructed constitution presupposes always the possession by those who are charged with working it some good sense, some moderation, some respect for law and for rights." The political and social virtues required for the regime of national self-government must be acquired by the people. Government and people have to bend their energies to this task. The system of public education which till now had aimed at the production of lawyers, doctors, teachers, and administrators and clerks, must now turn to the production of citizens. From the village school to the University, this must be

the end kept in view. The teaching of the virtues of citizenship—of public spirit, of service to others, especially the poor and the lowly, the suppression of egoistic impulses and caste servitudes—and training in these virtues must be the end and aim of education. Not the least important of the tasks for the Education Committee appointed by the side of the Simon Commission will be the formulation of a scheme of public education that will produce the men that will be able to live a life of freedom and organise the activities of national self-government. Not only education, but the whole scheme of individual and social life must be governed by the principle of the new constitution which is that of liberty and progress. For after all, going down to bed-rock, as the sublime commonplace (so Morley calls it) of Oliver Cromwell puts it, "What liberty and progress depend upon, are the souls of men and the spirits—which are the men."

XIV

The End.

These papers on the political topic which is in the forefront of discussion at the present time in India have drawn towards their end. The first of them was written soon after the British Cabinet decided to send out a parliamentary Commission which was to study the problem of constitutional development in India and to report their findings to Parliament. The writer of these papers took this mission of the Indian Statutory Commission as an opportunity for inaugurating a discussion on constitutional matters of high import to the people of this country. He was more concerned with the fact of the enquiry than with the manner of the enquiry. For however the enquiry may be conducted, the all-important thing for the country is the matter, the principles and the results of the enquiry. And so, leaving the question of the method of enquiry, whether it should be by paralleled commissions, or round-table conferences or by acts of self-determination, to tacticians on either side, he has fastened on the subjects of the constitutional enquiry. He is aware that his solution of the constitutional problem will hardly be found satisfactory by the chief parties ranged on either side of the battle.

There are two schools of thought which the views forwarded in these papers will antagonize. There is the school which looks upon reforms as a concession to agitation, and thinks that a little further advance than what obtains at present would do, and that always it is best to give less than what is wanted. On the other hand, there is the school of politicians that believe in self-determination and that India is ready for the fullest measure of self-government, and who will not be content with anything less than the status of a self-governing Dominion of the British Empire granted here and now. We need not take into account those others who believe that even the quantum of self-government that obtains at present should be withdrawn and India be once more delivered into the charge of an intelligent despotism, nor those others who contemplate independence as their ideal. They stand outside the pale of constitutional debate and must realise their ends if they mean to realise them at all by means other than constitutional. For discussion requires the possession by the parties of certain first principles in common.

Between the two schools who believe in constitutional progress for India, the ideas of these papers take their own course. They are grounded on a definite political theory which belongs to neither of them. They do not look upon reforms as a mere concession to agitation. Such an attitude to reforms

is exceedingly mischievous. For, concessions only feed the agitation which they are intended to placate. It is based upon the disturbing theory that the present rulers of India are holders of a citadel of power and privilege which they will surrender only bit by bit and only as the result of a continuous and determined assault. Such a theory does not contemplate the eventual political development of the country. It claims only to solve the problem of the hour. That is its condemnation. For, however English the attitude may be, and however successful that attitude may have been in England where rulers and ruled belonged to the same race and where the concessions related only to the extension of self-government to certain classes and not to the grant of self-government to the people, it will not do for India. The concession-theory is the reply of politicians to politicians. It can never be the statesman's treatment of the problem of Indian Government. Nor is the school that asks complete Swaraj here and now superior in its political attitude. If the concession school lacks in ideal, the Swaraj school lacks hold on the realities of political life in India. With the political unity of India as imperfect as it is now, with the superior civil services still preponderatingly manned by English civil servants, without a national army, with the yawning gulf that lies between the political, social and economic development of the villages and that of the towns,

to ask for complete and immediate Swaraj is to live in a world of one's own, not as men in a world of men. What is the use of talking Magna Charta without the army of Magna Charta? What kind of self-government is it in which the self is torn in two or three? Self-determination means not merely the right to determine one's future, but the capacity to organise it and defend it against all comers from without or from within. Can anyone say that the international situation in the East or the domestic development of India is such as to warrant belief in the security of Swaraj complete and immediate.

Neither the concession theory nor the complete Swaraj theory answers the requirement of a sound political theory, *i.e.*, that it should hold a dynamic ideal and take its stand on the facts of life. The theory upon which the ideas and recommendations of these papers are based answers this two-fold need. It is the theory of the political education of India. For this theory holds aloft an inspiring ideal, the speedy attainment of national self-government. It has hold of the realities of Indian life. It takes account of the need for furthering and strengthening the political unity of the country, of the need for speeding up the education of the masses, of the need for making the civil services and the army national, of the need of the people living their private and social life according to the laws of freedom and progress. The policy and programme of

gradual but substantial constitutional progress which has been advocated in these papers is justified of their political theory. The grant of complete local self-government, the establishment of a full-blooded responsible self-government in the provinces, the introduction of the principle of responsibility into the central Government, the rapid indianisation of the services, the conversion of the present racial armies into a national army officered by Indians, the rate of travel along the road to national self-government being determined by the rate at which the formation of a national civil service, a national army, and at which the social unity and progress of the people proceeds: all these reforms are directed towards the political education of the people. They are based on certain assumptions—that the political union of India is imperfect and incomplete, that the social life of the people is not founded on the ideas of freedom, that the masses of India are illiterate, that the army of India is not national, that the Indian civil service is not Indian, that many classes and the masses have been for long deprived of opportunities of governing the country. No one can deny that these assumptions are well-founded—not even the Swaraj school—for they are founded on fact and this school would be deprived of all their powder and shot in the controversial struggle with British rule if they denied these assumptions. And proceeding from these assumptions the reforms

advocated in these papers aim at the introduction of larger and larger numbers of the people into the business of administration at the various levels and into the different departments of government. For the art of government can be learnt only in the act of government. And as large sections of the people have, whatever the causes, been excluded from a share in the government in the century of British rule as in the centuries before British rule, it requires time for them to learn this art of government. And the time taken for the Indianisation of the major portion of the services and of the army, for the education of a fair proportion of the masses will give roughly the time that will be taken for the introduction of complete national self-government. But that does not mean that this time should be spread out as far as possible. The time should be only as long as that required for sound political education. The reforms employed should be such as to teach people, representatives and leaders, the responsibility of self-government. It is in the belief that the reforms suggested in respect of local self-government, of provincial and central government, the civil services and the army, the education and social life of the people aim at putting the people through a process of political self-learning that they are offered to the public.

These essays on Indian constitutional reform were occasioned by the visit of the Indian Statutory

Commission. And it is this Commission and the Parliament which appointed it that will have a decisive voice in the framing of the future constitution of India. It is this Commission that has to be seised with the desire to devise ways and means for endowing India with freedom and self-government. Nor is the work of converting the Commission to the ideal of freedom and self-government one of supererogation. Voices of reaction, of distrust and fear, of caution are already heard. The most strident of these voices are those that say: Let us see if the country is fit for freedom and let us give only as much freedom as it is fit for; the Commission should judge whether and to what extent India is fit for self-government. But there are other and siren-like voices which say: India is too vast and her population too large for western democratic institutions. Why should not India devise her own peculiar system of self-government? This specious argument would lose sight of modern inventions which minimise if they do not annihilate distance. For instance, with a good road system, the motor bus could do much to bridge the gulf between the village and the town. And it does not realise the possibilities of decentralisation. A well-organised system of legislative and administrative decentralisation, devolving large powers of self-government on district boards and village panchayets and enfranchising the masses in regard to them, would rob this

physical objection to political advance of most of its bottom. And, is self-government so peculiarly a western product that it will not bear transplantation. Ancient India was familiar with self-government, only it was the self-government of the village and the caste-gild. What is new to India is national self-government and that can be organised in time.

These debating arguments can never form the spirit which should inspire the enquiry of the Commission. It must start its work with the object of endowing India with freedom and deal with objections to an extension of freedom from that vantage ground. It would be told for instance that such a constitution as we have considered would appeal to or be approved of by only a small proportion of the population and that it would be an unreal, rootless constitution. But so has every popular constitution started as a legal fiction. None has ever been approved unanimously. All that a constitution should do to be called popular is to distribute power widely and multiply opportunities for self-government so that all may have scope for service and none may have a monopoly of privilege. Again, the Commission will be told that liberty is a generous wine and that it goes to the head of oriental peoples. But there are peoples on the continent of Europe to whose head liberty has ere now gone. And long and judicious use can accustom people to liberty as to

to generous wine. Or they will be told that parliamentary government is an exotic in India. But so it has been almost everywhere in post-revolutionary Europe till time has acclimatised it. They will be told that if self-government is to be extended, political power will devolve on a very small proportion of the people—for the electorates for the provincial and central legislatures will continue to be small. But let them be encouraged by the dictum of Rossi, one of the soundest of constitutional guides, that "political rights possessed by a few who have the capacity are the guarantee of the civil rights which are possessed by all". Least of all can they be moved by the cry to go back. Even a cynic like Talleyrand was of opinion that "the good faith of a government should never be compromised". Even if they have not the daring to go far forward, they must remove the mechanical defects in the relations between the transferred and reserved halves in the provincial governments and in the relations between the executive and the legislature in the central government. "You cannot" said Duvergier d'Hauranne speaking of similar circumstances in France in 1815 "grant a people free election, liberty of speech, liberty of meeting, parliamentary discussion of laws and affairs, on the condition that they do not make use of them or an insufficient use of them—it is like arming a people and treating them as if they were disarmed, it is as if you fitted

a machine with pistons, rods and valves and motive power and then refused to work it". It is not merely on the mechanics of the constitution that the Commission must advise Parliament. They must also advise Government as to the best means and methods of organising the political life and education of the people. They must convert those in authority to the new ideal of political education as the end of Indian Government. And Government must take positive active measures to organise that political education. In regard to education, social reforms, public opinion, the material bonds of unity, like a good road system, Government must be persuaded to take the lead. Why for instance, should not Government Gazettes explain the principles and details of government policy, defend measures of Government and do their part in the building of an enlightened public opinion? Government in India expects political parties to do this work, although it knows there is no real party organisation and that all the popular parties form a permanent opposition to Government.

These or similar recommendations the Indian Statutory Commission will make, if it is inspired with the high purpose of furthering the political education of India unto the ends of freedom and national self-government. If they are tempted to be overwhelmed by the facts of Indian life and depressed by the obstacles to an extension of

freedom "let their rigour relent" according to the advice of the greatest of English political advisers, who, ironically, enough was an Irishman, "let them pardon something to the spirit of liberty". An Egyptian legend reports Osiris to have asked Horus, "What is the most beautiful thing on earth?" and the reply of the god was, "It is the avenging of an ancient wrong". We need not pause to consider how ancient the wrongs of India are, whether they date from the beginning of British rule or from the dawn of Indian history. But whatever the date, the fact of the wrongs from which India has suffered through the centuries—the strangling grip of custom, the clammy hold of the Dead Hand, the spirit of division incorporated in the institution of Caste and the consequent denial of political unity, liberty and national self-government, and the servitudes of the conquered—the fact of these wrongs cannot be denied. It is an opportunity of avenging an ancient wrong that presents itself to the Indian Statutory Commission and the British Parliament. Their great opportunity requires that they shall be equal to it.
