

SUB-COMMITTEE D

UNREVISED

1

JOINT COMMITTEE
ON INDIAN CONSTITUTIONAL REFORM

MINUTES OF EVIDENCE

taken before Sub-Committee D
of the Joint Committee on

INDIAN CONSTITUTIONAL REFORM

Die Lunae, 16^o Octobris, 1933

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SUB-COMMITTEE D.

DIE LUNAE, 16^o OCTOBRIS, 1933.

Present:

Lord Hutchison of Montrose.
Major Attlee.
Mr. Butler.

Sir Reginald Craddock.
Mr. Davidson.

The following Indian Delegates were also present:

Dr. B. R. Ambedkar.
Sir Hari Singh Gour.

Dr. Shafa'at Ahmad Khan.

Lord EUSTACE PERCY in the Chair.

Wing-Commander A. W. H. JAMES, M.P., and Dr. J. H. HUTTON, C.I.E., I.C.S., are examined as follows:

Lord *Eustace Percy*.

D1. Wing-Commander James, you were commanding No. 60 Squadron of the R.A.F. in the North West Frontier Province from 1923 to 1925?—(Wing-Commander *James*.) That is correct.

D2. You spent three months among the Gonds and Marias in South Chanda and Bhiri Zemindari, and the Sholegas of the Billigirirangans, 1924; two months in the Central Provinces Jungles in 1925; and five months among Bhils of Satpuras, and Sholegas in 1926-27?—Yes.

D3. Dr. Hutton, I have your record of service before me. You served in East Bengal and Assam as Assistant Magistrate and Collector from 1909, Assistant Commissioner from 1912, and Deputy-Commissioner from 1920. Your whole service was in Assam, was it?—(Dr. *Hutton*.) I have been in the Census Service of the Government of India for four years.

D4. You were Census Commissioner from 1929?—Yes.

(*Memoranda Nos. 85 and 86 were handed in and are as follows*):

MEMORANDUM 85 BY WING COMMANDER A. W. H. JAMES, M.P., ON THE FUTURE ADMINISTRATION OF THE "RESERVED" AND "EXCLUDED" AREAS.

General Submission.

1. That paragraphs 106 to 109 of the White Paper proposals, relating to "Excluded Areas" and to "Partially Excluded Areas," are in need of consideration and definition before the framing of the Constitution Bill.

A study of the M/C Report, the Reports of the Statutory Committee, of the proceedings of the Round Table Conferences, and of the Franchise Committee Report, shows that the problem of the future treatment of the Tracts inhabited by Primitive Tribes has throughout been left vague. And of necessity so. Only with the assistance of experts in local knowledge—and they could not, in some cases, be readily found—could the demarkation of Tribal areas be settled, let alone their administrative future be considered; dependent as this must be in no small degree upon the extent of this demarkation.

The Situation to be met.

2. The Primitive Tribes, numbering in British India between five and six million people,* are scattered throughout India, usually inhabiting Forest areas.† They range from tribes numbering hundreds of thousands, like the Gonds, to tribes numbering a few hundreds, or less, like the Sholegas. They are backward, often excitable.‡ They are

*In Part II, paragraph 167 S.R., the estimated population of the Backward Tracts of British India is given as 13 millions. In the proceedings of the 3rd R.T.C., p. 188, an estimate of 12 millions is given.

†In paragraph 56, p. 29, of the White Paper proposals, Revenues from Forests are, without qualification, allotted to Provinces.

‡There are many more instances of Tribal instability than those commonly quoted, e.g., in 1918 there was a rising in Surguga Feudatory State, Bisalpur, owing to "squeeze" by traders, many banias being killed.

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distinct from the depressed classes,* and outside the Hindu or Mohamedan religions. Many elements from the Primitive Tribes have settled among neighbouring races, and, becoming cultivators or labourers, have tended to become merged into the depressed classes. It is to the majority, who live as more or less homogeneous blocs, and follow tribal customs and religions, that the attention of the Committee is directed. These people have had special protection in the past, and need it still.

Proposals Submitted.

1.—(a) That areas in which a majority of the inhabitants are aboriginals, and which are of sufficient size to form either by themselves, or in conjunction with adjacent areas, convenient administrative units, be wholly excluded from the Constitutional Reforms.

(b) That these areas be designated "Primitive Forest Areas," and be administered through a Chief Commissioner, acting under the Governor-General.†

(c) That for their efficient and economical administration a "Forestal Administrative Service"‡ be established, to be 75 per cent. European, 25 per cent. Indian (when the latter can be found).§ Recruitment to this service

*In appendix VIII, p. 123, the White Paper, no aboriginal tribes are named.

†The combined administrative functions proposed are not without precedents in addition to some mentioned in the S.R., e.g.,

(a) The Dangs. Where for many years the D.F.O. has wholly administered the district, directly under the Collector of Surat.

(b) Burma, where forest officers have magisterial powers in respect of forest offences.

(c) Assam, Mr. Bor, I.F.S., is also political officer, Balipara Frontier Tract.

¶It is submitted that it will be in the interests of the new Provincial Legislatures not to be burdened with such problems, entirely outside the ken of their members, as the tribal areas present. The nominated members, sometimes suggested, to represent the aboriginal interest, will also be avoided.

§In introductory paragraph 70 (iii) of the White Paper proposals, it is laid down that All-India recruitment for the Indian Forest Service should cease. Unless, therefore, some alternative scheme of recruitment is now adopted, the time will come when no European Officers will be available to look after the Primitive Tribes.

to be both direct, and by secondment and/or transfer from the existing Forest Service, Political Service, Army, or other services.*

(1) See S.R. paragraph 128, end (quoted in appendix p. 9).

(2) In view of the fact that the resident administrators proposed would be able, by acting largely through the existing patriarchal Tribal Machinery, to combine a number of executive functions—Forest work, Revenue, Judicial, Police, etc.—in simplified form, it is submitted that this proposal, which at first sight suggests expense, would in practice prove the most economical and suitable administrative machinery that could be devised.

(3) It is asserted by Forest Officers particularly interested in the Tribes that only a few Indians are as yet to be found in the Forest Service with the peculiar interests and qualifications needed for this task. (See S.R. Part II, paragraph 306 end quoted appendix p. 8.)

(4) In order to secure the service of officers with a bent for the life and work; as in the case with the Political Service, N.W.F.P.

2. That where there are enclaves of predominantly aboriginal inhabitants, of insufficient size, or too isolated, to form economical administrative units, these be treated as *partially excluded areas*, to be a Governor's special responsibility, and to be administered by officers of the Forestal Administrative Service, seconded for the purpose in the Provincial Government concerned.

APPENDIX.

EXTRACTS FROM DOCUMENTS.

Simon Report, Vol. I.

Para. 75. *Madras Agency Area.*—
These tribes follow their own animistic and tribal faiths. Their country has hitherto remained entirely undeveloped. While not aggressive, they are excitable and easily stirred to resentment against

*Many of the Tribal areas, notably the Madras Agency Area, are extremely unhealthy, reeking with malaria and blackwater fever. In many the climate is very bad. Unless, therefore, an All-India basis is retained, it is difficult to see how officers could spend a reasonable proportion of their service in healthy localities.

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economic oppression or unsuitable administrative measures. The last of the local rebellions in this area occurred as late as 1922 and was only suppressed two years later with the help of a strong detachment of the Assam Rifles.

The Laccadive Islands and Minicoy, which are inhabited by primitive peoples living in a patriarchal stage of civilisation, and also administered by the Governor in Council of Madras as a "backward Tract" in accordance with simple and elastic regulations.

S.R., para. 80. *Backward Tracts of Bengal.*— . . . Part of the Darjeeling district lies in the plains with a population mainly Bengali; the remainder is in the Himalayas, rising at one corner to 12,000 feet, and contains numerous hill-tribes with religion, customs, and language quite distinct from the rest of Bengal.

The Chittagong Hill Tracts . . . the population is about 170,000, and the people are as primitive as their agricultural methods.

S.R., para. 86. *The Punjab, Backward Tracts.*— . . . The Himalayan valleys of Lahaul and Spiti. . . . They present no administrative problems and their local affairs are satisfactorily transacted under a patriarchal dispensation. To preserve this simple form of administration these areas have been notified as "backward Tracts" and excluded from the Reforms.

S.R., para. 88. *Excluded Areas of Bihar and Orissa.*— . . . Owing to their large aboriginal population the five districts of Chota, Nagpur, together with the districts known as the Santal Parganas and Sambalpur, are partially excluded from the Reforms, and the district of Augul is wholly outside them. These backward races are commonly supposed to be remnants of pre-Aryan autochthonous peoples into whose strongholds in the hills and forests the invader found it difficult and unprofitable to penetrate. Some of them live by hunting, and by a type of shifting cultivation which we have described in writing of the backward tract of Chittagong in Bengal. In the valleys, the tribes have with great labour terraced isolated fields, producing abundant crops, but at no time before the establishment of British rule were these plots coveted by the plainsman, for he could not have collected his rents from the occupiers. But the moneylender and the trader took advantage of the new reign of law and order to reduce the aboriginal owners to practical serfdom. We must

refer for further details to the Memorandum on backward tracts prepared for us by the Bihar and Orissa Government. The need for special provision and special protection is brought out in the following extract:—

"They cannot compete against the subtler minds of the Aryan races that have in the past two or three centuries slowly penetrated into the country; their improvidence lays them open to the wiles of the moneylender; their lack of education and their distinctive language places them at a great disadvantage in the courts. When roused to action by real or fancied grievances their tribal organisation, where it survives, and elsewhere the solidarity of kinship makes for a rapid spread of disaffection, while their childlike outlook makes the duty of restoring order a peculiarly distasteful one."

The most notable of such outbreaks in this province was the Santal rebellion of 1855. The application of the ordinary laws of Bengal had resulted in the aboriginals losing their lands to their creditors. The Santals organised a large body to march to Calcutta to present their grievances; their advance was marked by looting and violence, and a large primitive force was required to restore order. After the rebellion, the district was excluded from the operation of the general regulations, and received its own agrarian Law and a distinct judicial system. These measures have not sufficed entirely to stop the penetration of the intruder, and in that part of the district which adjoins Bengal there is a considerable settlement of Bengalis who press for the removal of the business which have been set up to prevent the exploitation of the aboriginals.

The district of Augul, which contains new aboriginal population of 74 per cent., lies in the midst of the Orissa States. The district came later into British hands, and from the first has received a distinctive system of administration.

The problem presented by the aboriginals of the Chota Nagpur plateau, which formed part of the inaccessible forest trust which the Aryan invaders called the "Turkhand" is essentially similar. These primitive tribes amount to 58 per cent. of the population, and they nurse a resentment against the Hindu immigrants who, as they consider, have robbed them of their ancestral lands. Unrest, usually arising from

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agrarian causes, but often assuming a religious complexion, is still endemic. It has occasionally led to the employment of regular troops. . . . The present position would seem to be that the protective measures taken, though by no means adequate in the eyes of many of those who know the aboriginal best, have given him a breathing space, and stunted the tide of exploitation, but the constructive work of so educating him as to enable him to stand on his own feet has scarcely begun. He remains credulous and excitable, and almost as much as ever is need of special protection.

S.R., para. 91. *Excluded Areas of the Central Provinces.*—If the feudatory States be omitted, one-fifth of the Central Provinces is Government reserved forest. Leaving out both the feudatory States and Berar, one-quarter of the remaining territory—consisting of those parts which are coloured purple in the map at the end of the volume—is not subject to the reforms. In these “excluded areas” the Schedules Districts Act reserves to the executive the sole power of deciding what Laws shall be applied, but they are not “backward tracts” in the constitutional sense.

S.R., para. 94. *Backward Tracts of Assam.*—The backward tracts of Assam are of great importance and extent, and nowhere in India is the contrast between the life and outlook of these wild hillmen and the totally distinct civilisation of the plains more manifest. . . . No description can convey to the reader the striking impression provided by these gatherings, or the difficulty of fitting the needs and interests of such people into a constitutional scheme.

. . . the best judges doubt how far the recent quiescence of the hill-tribes—for the last expedition against them was in 1918—is due to contentment. If progress is to benefit, and not to destroy, these people, it must come about gradually, and the adjustment of their needs with the interests of the immigrant will provide a problem of great perplexity and importance for many generations to come.

The great majority of the hill tribes are far from forgetting their warlike past, with its long record of raids upon the plains. Many of them probably regard the Pax Britannica as a passing inconvenience. The confidence of the plainsman widened by the continual immigration and the breaking up of virgin soil is equally a recent feature.

S.R., para. 99. *Excluded Areas of Burma.*— . . . the backward tracts of Burma are of great extent. . . . The largest and most homogeneous of the administered tracts is that known as the Shan States. Though so described, the Shan “States” are a part of British India, but administered by hereditary chiefs or Sawbwas, to whom in varying degree large criminal, civil, and revenue powers over the population of their areas have been assigned. . . . The need of special qualifications and of long experience in the administration of the backward tracts has been recognised by the recent constitution of a separate Burma Frontier service which now contains some 50 members. The Commission met a number of the principal Sawbwas from the Shan States, and they appeared to be very well contented with their present system of administration. The dictum of the Burma Government on the Chin and Kachin Hill Tracts applies, we consider, to all the administered excluded tracts of Burma:—

“These . . . areas are all unfitted to participate in a constitution on representative lines suitable for Burma proper. Their people are educationally backward, and have evinced no desire to be linked with the Burmans, who in turn betray little interest in the hill tracts.”

So far as our short experience of Burma goes we confidently affirm the truth of these remarks.

Simon Report, Part II.—The Existing Constitutional Structure. Para. 172. Varying Degrees of Modified Exclusion.— . . . All the backward tracts which are not wholly excluded (except Darjeeling and Lahaul) are represented in the legislatures of their provinces, but it is impossible to regard their representation as really effective in most cases. In Bihar and Orissa the aboriginal preponderance in the population of the tracts is reproduced in the elaborate in only three constituencies out of nine. In two of these three, members really representative of the aboriginals have been returned at all three general elections: The other seven are represented at present by members of the very classes whom the aboriginals regard as most hostile to them. Two seats are also reserved for the representation of the aboriginals by nomination in the Bihar and Orissa Council. In Madras qualified residents of the Agency Tracts vote in the constituencies formed out of the three districts in which the tracts are

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included. The backward tracts of the Presidency are also represented by a nominated member. The whole of the Assam backward tracts (covering 50,000 square miles and occupied by half a million hill tribesmen) are represented in the Provincial legislature by a single nominated member, also for a considerable period was a Welsh Missionary.

S.R., para. 306. *Forest Administration*.—Something must be said of the work of the Forest Service. In some provinces, the forests yield an important revenue to Government; in Burma nearly 20 per cent. of the total provincial revenues. But apart from this they constitute a valuable economic asset to the community. It is an asset which could easily be frittered away and the pressure for a shortsighted exploitation of forest resources is strong. If the best use is to be made of them, long views must be taken.

It is not enough that Government should have a right policy in the matter; expert knowledge, professional enthusiasm and firmness in administration are essential in the controlling staff. From the nature of the work, defects in forest administration may not show their full effect for many years. The maintenance of the present standards of administration is, therefore, of great importance. The heads of the Forest Departments in their evidence stressed the need for the maintenance of the European element in the Service and we were the more impressed by their view because the life of a forest officer, which has many attractions for the young Englishman, makes less appeal to the educated Indian than a career in any other service.

Simon Report, Vol. II.—Recommendations. Para. 24.—*Federation in British India*.— . . . It would be a very superficial view of the Indian constitutional problem to imagine that areas like these ("Backward Tracts") fall readily into place within the prescription of some simple formula of universal application. The political institutions suitable for other parts of British India could not be effectively worked in them; yet they must have their place in the general structure. It is not reasonable or, indeed, possible to apply the same hard and fast constitution to every part of India, and to attempt to do so would necessarily retard political progress.

S.R., para. 128. *The Backward Tracts*.—The question now arises what arrangements should be made for the backward tracts in connection with the constitutional changes that we are proposing.

. . . But apart from these, or some of these, we have no doubt that these are other tracts which must be excluded from the general constitutional arrangements, and that special provision must be made for their administration. We would suggest, however, that they should in future be known not as "backward tracts" but as "excluded areas." The stage of development reached by the inhabitants of these areas prevents the possibility of applying to them methods of representation adopted elsewhere. They do not ask for self-determination, but for security of land tenure, freedom in the pursuit of their traditional methods of livelihood, and the reasonable exercise of their ancestral customs. Their contentment does not depend so much on rapid political advance as on experienced and sympathetic handling, and on protection from economic subjugation by their neighbours.

Para. 129.—The responsibility of Parliament for the backward Tracts will not be discharged merely by securing to them protection from exploitation and by preventing those outbreaks which have from time to time occurred within their borders. The principal duty of the administration is to educate these people to stand on their own feet, and this is a process which has scarcely begun. It is too large a task to be left to the single-handed efforts of missionary societies or of individual officials. Co-ordination of activity and adequate funds are principally required. The typical backward tract is a deficit area, and no provincial legislature is likely to possess either the will or the means to devote special attention to its particular requirements. Expenditure in the tracts does not benefit the areas from elected representative one returned. Moreover, the most extensive tracts (if Burma be left out of account) fall within the poorest provinces.

Only if responsibility for the backward tracts is entrusted to the Centre, does it appear likely that it will be adequately discharged.

Report of the Indian Franchise Committee.

Para. 339. *Aboriginal and Hill Tribes*.—The aboriginal population of British India is over 5 millions. . . . Our proposals for the extension of the general franchise will bring only a negligible number on the electoral rolls. It is, in our opinion, of the greatest importance that the interests of these people, who

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live a life entirely apart from the rest of the population of India, should be protected by effective representation in the councils, or, if this is not possible, by some other arrangement in the new constitution.

I.F.C., para. 340.—. . . The Government of the Central Provinces pointed out that the aboriginal tribes in the provinces are an extremely backward community and cannot expect to obtain any representation at all through the general constituencies. . . .

I.F.C., para. 343.—We have been unable in the time at our disposal to make any adequate investigation of this subject, and cannot therefore put forward any definite proposals. The matter should be further examined in detail by the Local Governments concerned and brought up at a later stage when the time comes for the delimitation of constituencies.

Brief note by a majority of the Committee on the minute of dissent submitted by Messrs. S. B. Tambe, C. Y. Chintamani and R. R. Bekhale.

Aboriginal and Hill Tribes.

13. We feel very strongly the necessity of providing adequately for the representation of tribal races and others, who have suffered so severely in the past from the ignorance of Administrators and Legislators as to their special customs

and conditions. We have come to no final conclusion as to the method of representation which should be adopted, but must repeat our recommendation, that the matter should be examined in detail at a later stage during the delimitation of constituencies. We are not prepared to leave the aboriginal tribes to take their chance in general constituencies, as our colleagues apparently suggest.

Indian Round Table Conference (Third Session).

Para. 16.—As regards the "special responsibilities" of the Governors these should be identical with those indicated in the case of the Governor-General, save that the first item on the list would necessarily be confined to the scope of the Province, or any part thereof, and not extend, as in the case of the Governor-General, to India as a whole Finally, it may be necessary to impose upon the Governor a "special responsibility" for the administration of certain excluded areas if, as seems possible, the arrangements for the administration of excluded areas involve their classification into two categories, one of which would be placed under the exclusive control of the Governor, and the other made subject to Ministerial control, but with an overriding power by the Governor obtained in the manner explained in earlier paragraphs of this report through his "special responsibility".

MEMORANDUM 86 BY DR. J. H. HUTTON, C.I.E., I.C.S.

ARGUMENT.

Although the position as regards the primitive tribes in the totally excluded areas is satisfactory *provided* exclusion is widely and freely resorted to at the outset, their interests generally are not adequately protected under the proposals made in the White Paper, inasmuch as the provision for the areas to be partially excluded from the operation of the constitution is not satisfactory. Adequate precautions have not been taken to prevent the interference of legislative bodies in these areas, and it is not clear that it is possible to withdraw such areas from the jurisdiction of the High Courts.

The primitive hill and forest tribes in all parts of India differ from their neighbours in the plains in race, in social organisation, in communal and domestic habits, in religion (very largely) and in

their general attitude towards and philosophy of life. Consequently they cannot be conveniently included in the same system seeing that:

(1) they are much fewer numerically, and representation in an elected body will carry no effective weight,

(2) their interests are commonly alien if not actually antagonistic to the interests of their more civilised neighbours, and will, therefore, always be liable, if not likely, to be sacrificed to those of the majority,

(3) the aboriginals themselves, although unvocal, are in several cases conscious of the dangers to themselves of inclusion in the autonomous provinces and are definitely wishful for self-determination and for the preservation of their traditional culture and manner of life.

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ILLUSTRATION.

These three points may be briefly illustrated by reference to particular cases, and it should be made clear that these cases are such as have arisen under the existing conditions in which the administration of hill and forest tracts is specialised and in which a bureaucratic Government has made definite efforts to suit its administration to the areas dealt with. Mistakes are likely to be far more numerous and far more serious if the areas in question are regularised and incorporated into normal self-governing provinces:—

(1) (a) In the Central Provinces and Berar these primitive tribes form more than one-sixth of the population of the province (including States); even the local franchise committee recommended two seats for their representation. The Prime Minister's award allotted them one seat. It makes little difference, as one or two seats of this kind offer no guarantee of any kind that any attention will be paid to the interests of, e.g., Gonds and Baigas. In withdrawing even partial exclusion for the areas previously (excluded and coloured purple on the Statutory Commission's map, the Central Provinces Government has acted against the interests of the aborigines.

(b) The representation of the Madras Agency Tracts is effected by the election of representatives in the plains areas. The aborigines in the hills—Kondhs and Sawaras, take no part in such elections, could carry little weight if they did, and are unlikely to have their interests considered for one moment by their elected representatives if those interests conflicted with the interests of the same representative's plains constituents.

(2) The interest of the aborigine is often alien to or antagonistic to the interests of the plainsman. This is illustrated in several ways—

(a) *In the ownership of land.*

(i) The system under which property is owned has been repeatedly misunderstood and the real owner expropriated by the application by courts of legal principles which in reality should not be applied at all. Example may be found in Chota Nagpur, where the feu duty paid to the chief by the landholders of a Kuntkatti village has been interpreted as rent and a sign of the chief's position as the proprietor of lands, which he never was. This

has led in the past to expropriation of the villagers. Similarly in the Chittagong Hill Tracts a Government Agent for the collection of taxes was erected into an hereditary chief in villages which owed him no sort of feudal or personal allegiance of any kind.

(ii) The system introduced by civil courts, and their interpretation of contracts and debts has led to wide deprivation of land by interlopers. Tribal law generally recognises no form of realisation by distraint except in such property as that included in the original loan, usually made in kind, and repaid perhaps in the next generation after a good harvest. Consequently loans are lightly taken and result in the reduction of the borrower to the position of a landless serf, or, in some cases, of a serf tied to the soil who renders the landlord half the crop in perpetuity. Chota Nagpur is again an instance in point, also the position of Gond villagers in the north of Hyderabad State at whose harvesting the moneylender is present and takes half the crop, the other half being sealed up for the use of the villagers and consumed gradually. When exhausted they must again borrow. In the Madras Agency Tracts the perennial spring-fed lands have mostly passed into Oriya hands as a result of contracts made under the influence of drink, or at any rate of thirst. In the North Cachar Hills in Assam the richer ricelands by the railway have largely fallen into alien hands as the result of a similar process, in spite of local restrictions on the issue of Government leases to foreigners. The fact is that the Deputy Commissioner has been too busy and too remote to realise what has been going on and the local Revenue Officer, himself an Indian of the plains, has merely recommended leases which recommendations the Deputy Commissioner has accepted without realising that the land was obtained by purchase, probably on mortgage, from an indebted Kachari who must in future work it as a labourer instead of as an owner. Such leases, although illegally issued, have not been cancelled. The local officers have recommended total exclusion from the White Paper con-

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stitution precisely on account of the presence of the railway which had caused the conflict of interests between the hillman and the foreigner. Another instance of the harm that can be done by an inexperienced officer and of the care that has to be taken in administering these areas may be taken from Assam, where a range of hills owned by the independent Nagas was regarded as important on account of the presence of suppositious oil or coal. Government bought the land from chiefs whose ownership was really no more than trusteeship, and when a survey party went to survey and demarcate it, it was resisted. This led to a visit by the Deputy Commissioner, Naga Hills, with an escort. He discovered that the northern part of the range was the sole cultivating land of an adjoining village on the next range, and Government when making a Reserved Forest of the area which was valueless for coal or oil, excluded the northern part of the ridge in order that it might be cultivated as before by the real owners. A few years later applications were made for the grant of this land for tea growing: these applications were accepted by the local officer who was ignorant of the history of the case, and recommended to, and accepted by, Government, and the land would actually have been granted to tea companies, if it had not happened that an officer who knew both its past history, and the inhabitants, was transferred to the subdivision in question before the leases were signed.

Obviously there is very good reason for the aborigine to fear expropriation from the land when once he ceases to be under special administration. Only quite recently the Legislative Council of Bihar and Orissa passed a resolution in favour of the exclusion of Chota Nagpur from the "Backward Areas Notification" (paragraph 52A of the Government of India Act) though this resolution was hotly opposed by the three representatives of the aborigines of Chota Nagpur in the Council, an indication of just how much consideration these areas are likely to receive when their only protection is one or two elected representatives. Even where there is no danger of expropriation of

land, exploitation by traders or moneylenders is feared, and in the Nicobar Islands it was found not long ago that nearly every household was heavily in debt to Indian and Chinese traders. These debts are paid in coconuts, which serve as local currency. These traders were given five years in which to realise what they could, after which any unpaid balance was to be automatically wiped out: the five years has expired, but there is good reason to believe that the Nicobarese, comparatively honest and simple islanders, are still paying coconuts to traders for debts and interest that they can never pay off in full. It is significant that the Nicobarese are so scared of Indian domination that they petitioned the Government of India in 1930 or 1931 to be made a Crown Colony, and said that they would sooner be part of Burma than of India proper.

(b) *In the Administration of Forests* the conflict of interests between the forest tribes and the community as a whole is shown in two contrasted directions:—

(i) A number of aborigines, such as the Andamanese, the Kadar, and the Sholaga of Madras, and, generally speaking, the Chenchu, the Kudumba, and the Paliyan of the same Province, do not practise cultivation at all, but are still in the hunting stage, digging for roots and hunting wild animals. To obtain an existence in this manner needs a very much larger area of forest land than would be enough if cultivation were practised. Such a mode of life is apt to bring those who follow it into conflict with forest officials and may be opposed to strict afforestation. Generally, however, such tribes will suffer more by de-afforestation. In either case they are unable to cultivate, and to teach them to abandon the hunting life for a cultivating life is a thing that can only be done very gradually indeed, and in some cases, e.g., that of the Andamanese, is probably impossible.

(ii) Even more serious a conflict of interest is likely to arise in the case of the tribes who practise shifting cultivation:—(*ghum, bewar, podu, etc.*). In many hill areas the slopes cannot be irrigated, and this form of cultivation is the only one possible. The tribes that practise it must live, but it is not only waste-

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ful, but it is apt to lead to denudation of the hills and consequently to inundation of the plains, apart from the waste of timber. In some cases land so cultivated is tribally owned, and rights of private property have hardly as yet arisen; but perhaps more often, as in Chota Nagpur and Assam, the first clearer of the land from heavy forest has established personal ownership and areas of such land have been transferred by sale, marriage settlement, mortgage and inheritance for many generations. Yet the Assam Government, for instance, treats all such land, theoretically at any rate, as unclassed State Forest, and a case recently occurred in which a man was fined for letting on lease a part of such land purchased by his grandfather from the original owner. In another case it was ruled that a man must pay heavy royalties for removing stone for building from land, theoretically unclassed State Forest, which had belonged to him and his family for generations. Some control and modification of the destructive practice of shifting cultivation is admittedly necessary, but prohibition of this form of cultivation has twice brought the Sawara tribe in the Madras Agency Tracts to the verge of open rebellion. As time goes on this problem will become, if anything, more intense. In part of the Naga Hills a judicious combination of persuasion and compulsion, aided by small grants from the Local Government, has enabled one tribe at any rate to substitute irrigation for shifting cultivation to a very useful extent, but there is every fear that under the new constitution it will be increasingly difficult to obtain such grants, if it be necessary to obtain them as the result of a popular vote in an elected body. On the other hand, the hillman has little capital to undertake irrigation himself and, where easily irrigable land is accessible to the plainsman it tends (as in the Madras Agency and the North Cachar Hills) to fall into his hands. Similarly the plainsman is encroaching on the irrigable valleys of the Mikir Hills in Assam, and, as already mentioned, is ousting the Hill Kachari along the hill section of the Assam-Bengal Railway.

(c) *In the exploitation of land for minerals.*

Tribes are apt to be affected in two ways (i) by the introduction into their country of an alien mining or oil-drilling population, which is often exceptionally dissolute and lawless, and (ii) by the taking up of village lands for mining, rendering them useless for cultivation and making it difficult or impossible for the village that owned the land to continue to exist. Two cases of this kind have occurred within my own knowledge. In one, the amount of land taken up by a coal mine included large areas of surface land over which, in theory, the village retained the right to cultivate when the land was not actually occupied by buildings or shafts. The cultivating rights were, in effect, valueless, as even temporary occupation by the mining company left it stripped of forest or covered with debris. In consequence, the village affected is no longer able to grow enough rice and has to depend on its ability to purchase in the plains. The indications are that it will lose its ability to grow crops and that its whole economic life will be destroyed. In the other case, the cultivation of the best half of the village land would have been rendered impossible had one been formed, because it entailed burning the felled jungle which would have been a very serious danger to the oil wells. In both cases the compensation paid to the village was in the form of a lump sum, quickly spent, and affording no sort of substitute for the permanent deprivation of cultivating land, though in the latter case the drillings were abandoned and the land is again under cultivation.

It is not suggested that mining is to be prohibited, but it is argued that the control of leases for prospecting and mining, and the operations involved by their issue need a very strong prerogative vested in a local official who is thoroughly conversant with the customs and the needs of the people who are the owners (in their own eyes, if not those of the State) of the land on which the operations are to take place.

(d) *In the administration of excise.*

(i) The extension of the licensed liquor shop system to the hill areas may do much harm. Thus in the

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Madras Agency Tracts again the Kondh was accustomed to regard the flowering of the *Mahua* as a time for drinking and licence, but for the rest of the year he remained sober by force of circumstances, until the establishment of a liquor shop for revenue purposes in the centre of his country enabled him to get distilled liquor at any time, and the result was very quickly seen in the transfer of his spring-fed terraces to Oriya interlopers who took advantage of his taste for liquor to deprive him of his land. On the other hand, the hillman is likely to be equally hit by

(ii) the extension of prohibition. In most cases he is accustomed to plenty of mildly alcoholic drink which he brews from grain for himself. Having generally no sugar he probably needs alcohol to replace it. In any case a policy of complete prohibition would be very severe indeed on Naga, Nicobarese and a hundred other tribes, to say nothing of the Gond (and possibly the Santal is the same) whose religious duty it is to refresh his household and ancestral deities with drink brewed at home. Strict control of distilled liquor and of distilling may, in many cases, be in the interests of the hillmen, but a policy of total prohibition, which is known to be favoured by both Hindu and Muslim in the plains, would be a tyrannous imposition in the hills. This case is an instance to show the necessity for the powers given under Section 108 of the proposed constitution.

(e) *In the provision of education.*

The interests of the hillmen have in the past been little considered. There is every fear that they will be less considered in the future. In Bihar and Orissa again the Santal is given primary instruction in an alien language instead of in his own and the same applies to primary education in perhaps all Provinces, except Assam, where in the Lushai, Naga and Khasi Hills, at any rate, it is given as it should be, in the local vernacular.

In higher education the hill pupil is inevitably handicapped by the non-recognition of his own language by universities, so that he has generally to learn an additional language to enable him to matriculate.

It is very doubtful how far local legislative bodies will be willing to vote money for the education of hill and forest tribes. At any rate in Bihar and Orissa attempts made to obtain grants for institutions which would principally benefit the Munda and Oraon have failed. Further the Bihar Government has admitted that the position of the aboriginal in regard to education is worse now compared to the rest of the provinces than it was before the last instalment of the reforms.* It is impossible to avoid the inference that the greater the extension of popular government the less money will there be for the aboriginal whose vote can be disregarded, even if he is capable of exercising it.

(f) *In the administration of justice.*

The methods of the plains courts and the legal procedure is completely unsuited to the hillman and the errors of High Courts, particularly the Calcutta High Court, have resulted in serious injustice in the past. Where the hillman is in contact with the plainsman and the two frequent the same courts with the same procedure the hillman very soon learns that truth and a straightforward statement of his case does not pay. Consequently, he resorts to a chicanery in which he is no match at all for his more sophisticated neighbour. In non-regulation district, however, the rules of the procedure codes are not strictly adhered to, and the more common method is, as in the Assam Hills, to follow the lines indicated by tribal methods. Distances are great and communications bad, and the first essential of justice in the hills is that it should be speedy. Consequently a form of summary procedure is generally found most suitable for all but really serious cases. Generally, owing to the difficulties raised by languages and customs entirely alien to the plains lawyers are useless. They are only allowed with the permission of the court, which would be given wherever their interference would be of any value, but generally

* The aboriginals "have got a little less than their general share of the big advance made in primary education, and decidedly less of the advance in high and middle education." *Government memorandum to the Statutory Commission.*

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the employment of lawyers merely complicates cases, and if they once took to practising in the Naga Hills, for instance, the administration of justice would probably become impossible. At best it would become a mere gamble instead of as at present, a generally effective dispensation of tribal custom qualified by equity. It should be added that the pressure of legislative bodies is always towards introducing the lawyer. This is shown by experience (e.g. of Bihar and Orissa).

Police in these areas (e.g. the hill districts of Assam or the Domini Koh of the Santal Pargannas) are generally both absent and unnecessary. The clansmen themselves, when not interfered with, are their own courts and their own police. A small civil police force is maintained to deal with the foreign population, using through communications, but is not normally allowed to interfere at all in tribal cases. For sophisticated people probably both police and lawyers are necessary evils, but where neither are found to exist, or to be needed, it seems a mistake to introduce them.

Under the codes in force, punishments may not exceed those provided in the Indian Penal Code, but, in actual fact, a felony is frequently found to be compoundable and is compounded, as it almost invariably would be, by tribal custom. I cannot conceive of anything more likely to result in general injustice in the Courts of a hill district than the introduction of the Code of Criminal Procedure as interpreted by the High Courts. This is also the experience of Rai Bahadur Sarat Chandra Roy, a well-known Indian lawyer in Bihar and Orissa, who has specialised in aboriginal customs and aboriginal clients from Chota Nagpur. He is very severe indeed on the demoralising and disruptive effects of trying to apply British Indian law to aboriginal litigants and cases. Further, wherever aboriginal areas come within the scope of the activities of the High Courts, actions which are perfectly correct according to aboriginal standards are liable to be punished as contrary to law: Thus, quite recently, a Bhil was convicted and sentenced for effecting a marriage by capture, which is a recognised form of Bhil marriage and which would

undoubtedly have been acquiesced in by the society in which he lived had there been no possibility of moving courts. This, of course, was within the jurisdiction of a High Court. A case in Assam of a very similar *bihu* marriage, in which the parents of the girl prosecute the boy for the sake of form, once led to a sentence of imprisonment for life given by a sessions judge unacquainted with local custom; the Chief Commissioner had to interfere. This, of course, occurred in a regulation district; in the hills the matter would have been tried and settled by local custom. It would have been cheap, expeditious and reasonably satisfactory to all parties, instead of involving the injustice of severely punishing for abduction a man whose behaviour was perfectly correct from the point of view of all the parties principally concerned in the case. Similarly the application of laws of inheritance entirely alien to them has, in many cases, been very severe on the aboriginals. In the Central Provinces very few of the forest tribes have been exempted from the operation of the Hindu law of inheritance, though these are commonly at variance with tribal custom. In the official papers of, e.g., the Posts and Telegraph Department a man may not declare his heir according to tribal custom if a relative exists whom the rules of the Department consider ought to be preferred. He can follow Hindu or Muslim law, but not his own tribal law.

Where, in Assam, the hillman comes into contact with the plains courts, he finds justice practically impossible to obtain. It frequently happens that gangs of hillmen go down and work on tea estates, and when they appear for payment they find that the contract was made with an intermediary who has drawn the amount due and absconded in the night. They cannot find him, if they can they are unable to point out attachable property as required by the court and, in any case, they cannot afford to wait foodless and wageless in the plains while the interminable delays of civil courts continue, nor to pay the necessary fees for a lawyer to fight the case hearing by hearing. If they did secure a decree they probably could not obtain realisation. Such cases

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are common enough in Assam, and there is no remedy for them, but the extension of the system which makes them not only possible, but frequent, to the hill tracts themselves is unthinkable to anyone familiar with circumstances; at the same time the only alternative is exclusion from the scope of the High Courts and of the legislative activities of provincial councils.

CONCLUSIONS.

The illustrations given above are enough to show that the tribal areas have interests which conflict with those of the people inhabiting the normally administered plains areas, and that the introduction of provincial self-government raises the necessity for some form of protection for these areas until they are in a position to stand on their own feet either as an integral part of the province in which they are found, or as independent units of the federated whole.

Failure to give some protection is likely to lead to the very rapid disintegration of tribal life, particularly in view of the very rapid development of communications in tribal areas, and to the economic ruin of the tribes. This has been so far recognised in the White Paper that provision has been made for the total or partial exclusion of such tribal areas from the operation of the reformed constitutions envisaged for the provinces. It is here contended that the provision made is inadequate.

It must be recognised that partial exclusion is an unsatisfactory expedient. It places the Governor of the Province in a difficult position in which his special responsibility for the interests of the aborigines may be found at issue with the views of both his Ministers and his Council; he is only able to prevent questions or resolutions having reference to such areas by interfering to disallow them in the Legislature, and it would be easier if they were *ultra vires* from the start. Experience has shown that pressure will undoubtedly be brought upon the Government—as it has been already in Bihar and Orissa and in Assam—under existing conditions—to extend the regime of ordinary law to the hill and forest areas where it is a curse and no blessing.

It is hard to believe that most Governors will not have difficulty in withstanding the pressure of their Councils and Ministers, even though the individuals pressing for the regularisation of tribal areas are the merest handful of vociferous immigrants, and it would be far safer for aboriginal areas to be excluded entirely rather than partially, so that all the excluded areas would be, under their own provincial governors, more or less in the position if such Chief Commissioners' Provinces as the Andaman and Nicobar Islands. In some cases they would be safest treated as States for whom, indeed, the provincial Governor might act as A.G.G. but which should not be treated as British India at all under the proposed constitution.

In the case of the Islands not only do the territories occupied form no integral part of the Indian Peninsula, but there is every reason to exclude them from participation in a federation in the policy of which they can never have any audible voice. The Nicobar Islands have already expressed their emphatic desire to be constituted a Crown Colony. The Islands of Little Andaman and Sentinel might conveniently be included with them in this archipelago administered by the Governor-General on behalf of the Colonial Office as in the case of the Aden Protectorate and the Island of Sokotra. Great Andaman falls, no doubt, into a different category, as being a penal settlement and partially colonised by Indians as a result of that, but here special measures are necessary for the protection of the few remaining Andamanese, the very rapidly dwindling survivals of a prehistoric race, while the inhabitants of Indian origin are too remote from the mainland to take any real share in its representative institutions.

This condition applies also to the Amindivi and Laccadive Islands, and the proper treatment for these latter groups of islands is perhaps to constitute them either an administered protectorate or a separate federal unit with such local self-governing institutions as may be found possible and suitable. At present they are "administered" by biennial visits from the Collector of S. Kanara or Malabar districts, and their own local institutions can hardly have failed to survive as they have survived, in great strength, in the Nicobar Islands, where the inhabitants are per-

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fectly able to conduct their own affairs if protection is given from external interference.

Continental areas are not easy to segregate, but the expressed desire of most of the tribal areas is for self-determination, and this could be secured in a number of cases by the creation of petty states on the lines of those in the Khasia Hills or the Karenni States of Burma. The guidance and supervision of political officers would be necessary for some time, but there is no reason why self-governing units should not be fostered, or why the tribal areas should not be allowed freedom to manage their own affairs as petty units of the Federation like the minor states of Western India, unless they preferred, as they might at some subsequent date, to apply for complete incorporation in an adjoining province. Clearly the initial difficulty is one of finance, but the more closely they are administered the greater will be the cost, and the cost of administration on political lines would be no greater than that of incorporation into a self-governing province with all its apparatus of elections and representation. Many of them like the Kolhan in Singhbhum (Bihar and Orissa) retain their original self-governing institutions still intact. It is not suggested that excluded areas should be retained precisely as they are. Something must be done to set them on their own feet, but it is argued that total exclusion as proposed under the Statutory Commission scheme for some of the Assam Frontier should be extended to the North Cachar Hills to the Mikir Hills, the Garo Hills, and to part at any rate of the Jaintia Hills in Assam, to the Chittagong Hill Tracts of Bengal, to at least the Palamau and Ranchi districts, the Domini Koh in the Santal Parganas and the Kolhan in Singhbhum in Bihar, to Lahaul and Spiti in the Punjab and to parts of Orissa, of the Central Provinces, of Bombay, and of the Madras Agencies and islands, to say nothing of parts of Burma.

For other continental areas, most of which are small and largely penetrated by plainsmen, partial exclusion is possibly the only feasible method, but this should be applied to more areas than those envisaged in the Statutory Commission's Report, and in particular to hill areas in Madras south of the Godavari River and probably in northern Bengal, Bihar and Orissa and the Central Provinces where total exclusion is impracticable. Careful examination and demarcation is

required. Above all, a strong prerogative is essential to their good administration. It must remain possible for the officer in charge to remove any undesirable person from the areas in question. This power is provided at present in various ways. In Burma and in the Frontier Districts of Assam and in the Madras Agency Tracts powers exist under varying forms which enable the district or political officer to remove from the area to which the Act extends any non-indigenous person whose presence is found to be undesirable. This power could be employed to advantage in the Madras Agencies in deporting Oriyas and others found trafficking in liquor with the tribes. It has been used to extrude both Europeans and Indians from the frontier districts of Assam, where trouble has been stirred up by such intruders. A nominal exclusion which did not give the local administration power of this kind would be useless, but the existence of such a power is perhaps incompatible in a self-governing unit. Another point which should be made clear is that in considering the boundaries of excluded, or partially excluded areas, regard should be paid to tribal, rather than to political, boundaries. A slight alteration, for instance, of the boundary proposed for the new Orissa Province would make that boundary coincide with the boundaries of the lands occupied by the Sawara and Kondh tribes respectively. This was pointed out to the Orissa Boundary Committee, but unfortunately was not apparently regarded as a matter of importance. It is, however, very much easier to deal with consolidated tribal units than with mixed ones, particularly as some policy of political and economic development is essential to their future administration, and in this respect the tribal consciousness of existence as a corporate and integral unit is needed. A further point of some importance is the training and selection of officers for the administration of excluded areas. By no means all officers are suited by temperament or inclination for work in tribal areas and the best are generally those who are caught young. The proper administration of the tribal areas really involves the careful selection of suitable officers who shall be directly subject to the Governor, and when, if the recruitment of officers by the Secretary of State on behalf of the Provinces is stopped, it might still be necessary to continue to recruit enough to staff the excluded areas.

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[Continued.]

D5. We have before us the Memoranda which you gentlemen have been kind enough to lay before us. Dr. Hutton, would you wish at this stage to add anything to your memorandum before we begin to ask questions?—I do not think I have anything to add.

D6. Commander James, would you like to add anything?—(Wing-Commander James.) No.

Lord Hutchison of Montrose.

D7. I would like to ask the witnesses one or two questions about the machinery under which those reserved areas or backward areas would be administered. Under the White Paper they are under the control of the Governor, but I understand that the Governor-General has got to agree to the various regulations which are issued by the Governor for the control of those areas. That is so, is it not?—I take it so, but it is not easy to understand what the intention of those paragraphs is.

D8. Under paragraph 108 of the White Paper the Governor-General has to agree to the various regulations. Could you tell me from your experience to what extent have the Foreign and Political Departments under the Governor-General not any control over those areas?—None. (Dr. Hutton.) None whatever at present. The areas are all at present (and as I understand it they will be still, under the White Paper's provisions as they are) administered through the Governors of the Provinces, whereas the Foreign and Political Service is directly under the Government of India and does not overlap in any way.

D9. They do not overlap at all?—No.

D10. Then do I understand that those reserved areas correspond directly with the Governor?—At present, no. Under the existing condition in the non-regulation areas as they are at present, the officer in control of the area is under the Commissioner and works through the Secretariat of the Governor in the ordinary way.

D11. Very well. Then under the White Paper proposals, when you get the Provincial Government form you will then have touch direct with the Governor in dealing with those areas?—In dealing with the totally excluded areas, but not in dealing with the partially excluded areas. The arrangements for the two as proposed by the White Paper are quite distinct.

D12. Have you any knowledge of the backward areas in Madras?—A little.

D13. In dealing with those, who is the Commissioner there responsible in Madras under the White Paper proposals? Will he go straight to the Bureau of the Governor, or will he go through any Government official?—I am not at all sure how that would work. If you do not mind my taking an instance from Assam, which I know better, in the case of a criminal appeal, for instance, in a totally excluded area, the appeal, as far as I can make out in Assam, goes direct to the Governor through the Secretary responsible, whereas in the case of the partially excluded areas it may go to the Minister. That is a point which has not been decided and which is not clear from the White Paper.

D14. In the event of disputes or legal cases coming along, are those cases fit to go before the ordinary Tribunal of the Province?—Not in Assam; in most Provinces, I think they are.

D15. In most cases, they are?—At present, I think so.

D16. In mountain areas—those forest areas—would the same rules apply there as would apply down in the plains?—Yes; in most Provinces the High Courts have jurisdiction. In Bihar and Orissa, the High Court has jurisdiction over the hill areas; in Assam the High Court has no jurisdiction in the hill districts.

Sir Hari Singh Gour.

D17. Are not some of these areas covered by the provisions of the Scheduled Districts Act?—Yes.

D18. In that case, the acts of the Governor-General of the Province *ipso facto* would not apply unless they were extended by the provisions of the Scheduled Districts Acts?—That is so.

Lord Hutchison of Montrose.] Would that apply to the disputes on land tenure?

Sir Hari Singh Gour.] Yes.

Sir Reginald Craddock.

D19. You recognise the difficulty, do you not, as between tribes who are scattered over an area in which the reforms will be fully at work and tribes which are territorially complete, so to speak?—Certainly; I recognise that difficulty.

D20. And away from them?—Yes.

D21. That would apply to Assam and Burma?—It might be that the exclusion or the territorial separation of

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tribes goes further than that. I think there are tracts in Bihar and Orissa and Madras which are practically tribal.

D22. They would be scheduled, perhaps; but even in the Scheduled Districts, I suppose, you would recognise that the Indian Penal Code and all the ordinary Acts apply; that is to say, the administration of the Criminal and Civil Law and the ordinary Revenue Law in many cases are applicable to people of those castes?—They have been applied to them; I think in many cases wrongly.

Sir *Reginald Craddock*.] On the other hand, there are people like the Gonds in the Central Province who are scattered over the whole of the Province. There are more in one place. I know you have an Act about Land Alienation.

Sir *Hari Singh Gour*.] Yes, about the aboriginal tribes.

Sir *Reginald Craddock*.

D23. That has been specially enacted?—Yes.

D24. But the difficulty about those Acts has been that a great deal of harm has been done probably before the evils which the Acts were meant to deal with had come to light?—Yes; that is true.

D25. On account of the fact that the statistics of criminal and civil courts naturally do not supply any information as to the caste of the parties?—No; I think part of the evil is that the Civil and Criminal Courts recognise Hindu and Muslim law and never recognise tribal law.

D26. That is so, probably. It is partly due to the fact, no doubt, that many of the tribal people cling on to the garments of the Hindus, so to speak, and they have got so accustomed to that sort of thing that they have their joint families, and so forth, so far as the courts know. They do not plead that there is any other law except the Hindu law?—They very often do.

D27. They would in certain tracts, no doubt?—They would if they could, no doubt.

D28. But they have not done so hitherto?—I do not think they can plead any other law except the Hindu or Muslim law. It is not recognised by the courts and it is useless for the tribes to plead it.

Dr. B. R. *Ambedkar*.

D29. Cannot they plead tribal law as their customary law?—No; it is not recognised by the High Court.

Dr. B. R. *Ambedkar*.] The High Court would recognise any custom. It is not necessary to establish that it is a Hindu or Muhammadan custom. If there is no law laid down in that sense, the custom would govern. Ordinarily, that would be the thing. I am not speaking with first-hand knowledge.

Sir *Hari Singh Gour*.

D30. The Civil Courts of most of the Provinces make a provision for the enforcement of any customary law regulating domestic relations and succession?—It is extremely difficult in that case for the tribe to establish its customary law.

D31. That is for a different reason?—I see your point.

Sir *Reginald Craddock*.

D32. As far as my experience goes, and I expect it is yours, when they are not definitely under separate political control like the wild mountain tribes, and so on, who are not under the ordinary administration at all—is not that the case?—Yes.

Sir *Reginald Craddock*.] There are places in Burma where you can punish murder with a fine under the special regulations.

Sir *Hari Singh Gour*.] That you could do in England not far back.

Sir *Reginald Craddock*.

D33. I am not making any comparisons. I am only suggesting to the witnesses that there is a distinction between people of the various tribes like Chinds and Nagas and Cochins and Kukis and people of that description who are on the Burma Frontier, for example. There is a distinction between treating them under a separate officer or officers from treating aboriginals in regularly administered districts who have hitherto been under the ordinary law and under the ordinary district officers commissioners and under the ordinary Courts, and it seems to me, judging from the evidence both of Wing-Commander James and yourself, that you are anxious to get some sort of supervision over these aboriginals, wherever they may be?—Yes.

D34. Some sort of protection for them?—Yes.

D35. For example, would your case be met if there was in the Province an officer designated superintendent of aboriginal tracts or aboriginal tribes?—(Wing-Commander *James*.) No, emphatically not. I submit that the White Paper proposals

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go back on the specific recommendations of the Statutory Commission of the Franchise Commission and of the Third Round Table Conference. The Franchise Commission, for example, actually whittles down the suggested numbers to between four million and five million. It underestimates the numbers in British India by more than half to begin with, and so on, *pro rata*. I submit that these people would be in the interests both of the Provinces and themselves better for the time being or for the moment left entirely out of the proposed constitutional change.

D36. Yes, but I was putting to you that under the Governor, there should be one officer in the Province whose duty it was to look after these people?—But I would submit that if I accepted that, I would be denying the need which I maintain exists for Central Authority, that the Governor would only be the Agent for the Governor-General. I do not think merely a representative of the Governor would suffice.

D37. But do not you think that would be a rather extreme measure of centralisation. The information at the disposal of the Governor-General would be only what he got from the Governor. I am not suggesting that he should be under the ordinary ministers?—I thought you were.

D38. No?—I am sorry.

D39. I mean a separate Governor's duty with an officer for that specific purpose to look after generally the interests of the forest tribes?—(Dr. Hutton.) Provided they were as far as they could be territorially excluded from the constitution.

D40. Yes, so far as they can territorially be excluded?—Yes.

D41. But even if they cannot be, it might be possible?—It is all the more necessary if they cannot be.

D42. Yes—to have some officer who is charged with that duty. The point I want to put to you is that in many cases these aboriginal tribes are living more or less in the heart of the forest. Sometimes the land they cultivate is actually reserved forest?—Yes.

D43. Which is known in India, in a good many parts anyway, as a forest village?—Yes.

D44. That is, under the Forest Officer?—Yes.

D45. But the Forest Officer is generally very fond of the tribes, and looks after

them to the best of his ability, and he manages that village. The Revenue Authorities do not have anything to do with those Forest Villages, except criminal law, but then there are villages (I daresay you have had some in some of the areas) where the ordinary deputy Commissioner or Collector, or whoever he is, keeps an eye over the villages as he is supposed to do over the whole of the district. Then for them I am suggesting to you that some kind of superintendent of the interests of tribes should be an officer appointed by the Governor to enable him to carry out his duties, not necessarily to look after the magisterial work, and so forth?—(Wing-Commander James.) May I point out, Sir Reginald, arising from what you have said, it is perfectly true that the life of the bulk of these people is bound up with the forest administration, but under the proposals with regard to the existing system, the forest service is being transferred entirely, and the time will come, for example in Bombay I think in 1947, when there will be no European officers left in the forest service, and the Secretary of State in a reply that he gave last week at question 6427 and the following questions, stated definitely that the forests were subjected to no safeguards, and that no Governor's intervention was possible, and, furthermore, in the White Paper without qualification the forest revenues are allotted to the Provinces. There seems to be a complete contradiction.

D46. But I was suggesting to you some modification which would allow a Governor to carry out his duties in respect of those backward tracts with the aid of a special officer?—Quite, but in that case the Secretary of State's reply which I quoted would require modification.

D47. What I was really trying to get from you was whether you agree that supervision and that kind of thing might be provided for in the Constitution Act?—Certainly, it must be.

D48. And as regards these other tribes, they are already under the Political Department; they are all probably altogether excluded. I am talking of a local political department. For example, in Burma those places would be under people of the Burma Political Service and not under the ordinary District officers—those excluded tribes?—(Dr. Hutton.) They would not be under a

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different Service in Assam or in Madras. (Wing-Commander James.) Or in the Central Provinces.

D49. But the ordinary officers would administer them, and their supervision from the Governor's point of view would come through the officer who was superintendent of all these tribal matters and tribal interests?—(Dr. Hutton.) Provided the areas were totally excluded. I am not satisfied that that would be the case if they were only partially excluded.

Sir Reginald Craddock.] It is very difficult to exclude an area which contains, not merely aboriginal tribes; you come across a Korku or a Gond village, and its neighbours may be ordinary villagers.

Lord Hutchison of Montrose.] I take it that the point that you want to make is that it is not only the excluded areas that you want to allow for, but it is the individuals?

Sir Reginald Craddock.

D50. Yes; I will make it clear. Hitherto, the reason why these people were not protected in this way much earlier—they should have been protected much earlier—I admit that they should have been—is that the evil that is going on does not get noticed until it has gone a long way?—That is so.

D51. And, therefore, a whole lot of milk has already been spilt?—(Wing-Commander James.) But I think it could be mopped up even now. = cleaned

D52. That is why I am suggesting to you that one officer in the Governor's staff might deal with this question if it was specially enacted in the Constitution as a means of dealing with tribes. Then, of course, locally in the districts some of them would come under a Forest Officer directly, and I have no doubt that if it were a special duty an Indian member of the Forest Service would be sympathetic to these people?—Undoubtedly, in certain cases.

Major C. R. Attlee.

D53. I want to ask you, first of all, a question about the personnel of the officers who deal with these excluded areas. Dr. Hutton, in Assam, I take it, that an officer has to specialise before he can be very effective in those areas because of the languages and the customs. Is that so?—(Dr. Hutton.) The officer who is really good in the excluded areas is generally one who is caught quite young before he has got accus-

tomed to the ordinary routine of the Service. Unfortunately, there is no guarantee that he will be kept in such areas because he is normally exchanged with the plains.

D54. Quite. Supposing that these areas are excluded and, as far as possible, kept outside the ordinary Provincial structure, do you think it would be possible to have something like an All-India cadre of officers dealing with backward areas?—That would be the only method of having any specialised cadre for such areas, because otherwise it would be so small as to be unworkable. In each Province the excluded areas would be so small that you could not have special cadres for them unless you had an India cadre.

D55. A point arises there also with regard to Commander James's point. You suggest, I think, that the Forest Officers should be particularly charged with these backward areas?—(Wing-Commander James.) For economy and to avoid duplication.

D56. But you are aware that the idea is that the Forest Service will become a Transferred Service and a Provincial Service?—That is what I pointed out just now.

D57. Do you suggest that the Forest Service should not be transferred?—Not at all; because there are many forest areas, like South Kanara, which is inhabited by caste Hindus. All I suggest is that where a forest area is solely or mainly inhabited by backward tribes then it should be an excluded area, administered by a special service. The cost of the normal machinery is totally unnecessary to these areas.

D58. I was going to deal with the cost in a moment. Dr. Hutton, do you say that you wish that the hill areas of Assam should be cut away entirely from the plains area, or do you think that they should come under the Governor-General as a separate unit?—(Dr. Hutton.) Personally, my own view is that they would be better cut away entirely, but it would not be a possible procedure under the White Paper as drafted. There is no provision for such total exclusion.

D59. I was asking, rather, what you wished?—My own idea would be to administer them independently directly under the Government of India.

D60. And have them administered from an All-India Service?—I think that would be preferable, yes. You might recruit it from all sorts of other Services. You-

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could borrow from the Army, Forest Department, the Civil Service, and the Police, where you found suitable men.

D61. Would you say that the experience of someone who had specialized in the Assam tribes would be available if he were transferred, let us say, to Chota Nagpur?—His experience would be available. His language would be the difficulty. He would have to learn fresh languages.

D62. Do you think that in such a Service it would not be possible to provide a career, so that you would not have officers who had specialized in these areas having to go back and take up a different sort of work in order to get a higher position in the Service?—I think if you included all the areas it might be possible. It would want careful working out—if you included the islands.

D63. With regard to the finances of the backward areas, do you think that they should come from the Centre or should they come from the Provinces?—I think that is a question I am hardly competent to answer. In some cases, where the tribes inhabit a frontier, I think it would certainly be reasonable that the Centre should contribute; it is a matter of frontier insurance.

D64. Let me put it in this way: I take it that the backward areas are, generally, a cost to a Provincial Government?—Yes; they are not remunerative. (Wing-Commander James.) Not all; some are very remunerative. Some of the forest areas are very remunerative.

D65. Yes; but as a general rule I dare say the larger areas of the backward tracts are a deficit?—(Dr. Hutton.) I think they barely pay their way as a whole. The actual areas that are administered as non-regulation districts at present do not pay their way.

D66. Will not there be a tendency if they are cut off from the Provinces, if they have to come on to the common purse, for the Provincial Government to prefer to spend its money on the areas which are directly represented, rather than on these excluded areas?—I am sure they would; that seems to me to be one of the difficulties, but I think the Provincial Governments have been most unwilling to spend money on the excluded areas if they can help it.

Mr. R. A. Butler.

D67. I think it might help the Sub-Committee to say that there is an actual loss on the backward areas in Assam.

For policing purposes the cost amounts to 21 lakhs?—That includes the Military Police. Although on paper that is a debt to the backward areas, because that is where the police are posted, they are very often used in fully administered areas on the plains; for instance, in the Bihar riots the Assam Military Police were called on to such an extent that we could hardly keep up our own garrisons.

Lord Eustace Percy.

D68. To make it quite clear, is not it a fact that that loss of 21 lakhs only relates to the backward tracts which the Assam Government want the Central Government to take over? It does not cover all the tracts in Assam which you propose, on page 201, to exclude, does it?—No.

Major C. R. Attlee.

D69. It is, is it not, in a number of cases, more or less an accident that certain backward tribes are tied up with certain Provinces? For instance, Chota Nagpur with Bihar?—Yes.

D70. So it is quite natural that they should not be keen to spend money on it. Would you, generally speaking, agree with the recommendation in the Statutory Commission, that the backward areas should be a Central charge administered by the Governor as agent of the Governor-General?—Yes, I think so; I would agree with that. You mean the responsibility being with the Governor-General?

D71. Yes?—Yes.

D72. Taking Assam, you said that it might be possible to separate these hill areas altogether from the plains. Is there, as a matter of fact, any tendency for a borderland to grow up between them in which both sections are interested? Is there any extension, so to speak, of plains civilisation to the hills area?—In most of the hill districts none. The forests which divide the hills, which come down from the hills into the plains, are, in point of fact, geographically part of the hills, and at present they are administered as part of the plains districts, but there is no real overlap in Assam.

D73. I gather it is your view that in the interests of these people you should preserve their present simple form of administration and not try to bring in a more advanced form?—I think some form of development might be very slowly introduced; I think it probable

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it ought to be, but it would have to be a very very simple form, and it could not come about for many years. At present the present simple form of administration would have to continue, but I think something might be done in the direction of forming a tribal Durbar or a tribal Council which would ultimately voice the opinions of the tribe.

D74. Is your view that the kind of administration wanted is an experienced officer who guides the people in all their affairs rather than a full administration divided up into all kinds of different activities?—Yes, very much so. I think an experienced officer who can guide the civil administrations is what is wanted. For instance, in Assam most of the hill districts provide their own police; the outside police are not allowed to go into a hill village without permission, and the people are perfectly capable of providing their own police; they do all that sort of work themselves, and it would be the greatest mistake to introduce the police officers with Thannas and so forth. That is only an instance which applies to all parts.

D75. Adverting to the point put by Sir Reginald Craddock with regard to the Backward Tribes who are scattered amongst the rest of the population, would it be possible in your view for an administrator who was administering a regular excluded area to be the Governor's officer for protecting the scattered ones, if there were such, in a Province?—I think that would be possible, yes.

Mr. R. A. Butler.

D76. I want first of all to ask one or two questions about Wing-Commander James's suggestion for a Forestal Administrative Service. I think, Dr. Hutton, you referred to the difficulty of having the small cadre of officers in any service. In the projected Forestal Administrative Service which is suggested in Wing-Commander James's note, can you tell me what the size of this tribe would be and what the cadre of such a service would amount to in numbers according to your idea?—I could not possibly do so offhand. (Wing-Commander James.) May I point out that I do not think anybody could answer that because the boundaries have never been delimited at all. The Secretary of State, for example, has pointed out that there will have to be an inquiry. I suggest that the same sort of inquiry is essential to delimit the tribal areas.

D77. In making this suggestion it struck me that you might have formed some idea of the size of such a service?—I have asked a number of Forest Officers serving and retired, and they all thought that it was probable that the area would permit of such a service, but I have not yet met anyone who would express an opinion outside his own Province.

D78. May I put it to you that it is likely, considering the present experience—take one Province, Assam, for example, where very few officers are involved in the work in the Backward Areas—that this would be in fact a very small service?—I should think it would be very small.

D79. In that case do you not think that the difficulties which Major Attlee has put forward would arise in the case of language and in transferring these officers from one district to another, very often totally dissimilar in every way?—I did not suggest it as being a perfect scheme. I suggest it merely as a *faute de mieux*, because nobody, and I have inquired of many people, has suggested any alternative.

D80. I am only trying to get your ideas, because every suggestion is, naturally, helpful to the Committee. You raised one difficulty in the course of your notes, which is that of health, and you say that this idea must be put forward because it will be impossible to move officers from unhealthy tracts to healthy tracts. Would not that be equally possible if the converse of your scheme were accepted and if Provincial officers were occasionally transferred to the Backward Areas and those who had been working in the Backward Areas were transferred back to ordinary district work?—It would be possible, but the difficulty there arose in my suggestion that in view of the rapid Indianisation of the Forest Service there would very shortly be a scarcity of civil officers.

D81. Sir Reginald Craddock raised the point about the scattered nature of many of these aboriginal populations, how they intermingle with ordinary districts in many cases in the Central Provinces. Would it not be possible to say that the work for, at any rate the partially excluded areas, would be done in the majority of cases by ordinary district officers and not necessarily by the Forest Service?—That would depend upon the delimitation of boundaries that I suggested was necessary.

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D82. But in the event of scattered populations being in the middle of ordinarily administered territories, it would be possible for the ordinary district officer to do the work better than anybody else?—Certainly in that case.

D83. And in that case it would be possible to fulfil the desideratum of a change in climate within one Province by changing the officer's station from one to another?—It might be.

D84. It would also be easier for the officer to assimilate the language of one Province?—Certainly.

D85. It would therefore seem to be better to organise these services more on a Provincial basis than on an All-India basis taking into consideration the question of the small size of the cadre of the service?—It is a bound of probabilities which appears to be incapable of answer until the delimitation is done.

Lord Eustace Percy.

D86. I wonder if we might ask Dr. Hutton for his opinion on this question of a separate service?—(Dr. Hutton.) I was trying to think of the number of districts. My opinion is that a separate service might be of advantage. It might be possible to combine it with the Foreign Political Service.

Dr. Shafa'at Ahmed Khan.

D87. Not the Forest Service?—Not the Forest Service.

Mr. R. A. Butler.

D88. At present I understand the Home Department would be a more likely Department to be involved—not the Foreign Political Department?—Yes; I think there would be enough districts to form as many posts as a small Province.

D89. You consider that the difficulty of language and assimilation of new ideas which is so much recognised in the Colonial service would not arise in this case?—The difficulty of language would arise. I am not sure about the difficulty of ideas; no, I think not. No difficulty of language could be greater than we have at present in Assam, my last district. There were 16 different languages as different as the languages of Europe.

D90. It would be your suggestion that this service as suggested would be a small cadre?—Yes, that is my suggestion.

Lord Eustace Percy.

D90A. What would be the top-most plum to which the man in such a service would rise?—That is a point I had not considered. It would depend entirely on the way in which you decided to arrange the service. The highest post would be somebody under the Government of India but connected presumably with the Home Department equivalent to the Head of a Department.

D91. There are two considerations obviously to be borne in mind. One is: What is the number of posts which would be reasonably possible for a married European, because I gather you want a largely European Service?—Yes.

D92. And what would be the proportion of posts to which a man could look forward, at a really fairly high salary, to conclude his service?—The average man at present cannot look forward to much more than being first grade Deputy-Commissioner, and most of the posts involved in a service of this kind would be Deputy-Commissioner posts. You might add a Commissioner or, if you liked to call him, a Chief Commissioner—an officer to cover the Head of the Department, whoever it is, with the Government of India, and possibly a Secretary of some kind.

D93. What about the conditions of living for a married European?—It is better in most of the backward tracts than in the plains. They are mostly higher in the hills.

Mr. Butler.

D94. Would not there be great overlapping of work in a district which was partially excluded in which, as Sir Reginald has pointed out, the aboriginal population was scattered?—Yes.

D95. Very great difficulty?—There would be great overlapping of work if you had a separate officer for a scattered aboriginal population.

D96. One being a Central Service and the other being an All-India Service working in the Province?—Yes.

D97. It would be very difficult to administer?—Yes, but my point was that the districts I mentioned here were areas which could be totally excluded.

Major Attlee.

D98. We know, Dr. Hutton, you have done a very large amount of research work into the condition of tribes, and so forth. Is that kind of work done among

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officers who take up work in backward areas?—No; there are a certain number of officers who take it up, but they are a small proportion.

Mr. Butler.

D99. I wanted to raise one or two other points. Would it help you at all in discussing the type of officer which I think Wing-Commander James has certain apprehensions about, and particularly European officers—?—(Wing-Commander James.) So did the Simon Report.

D100. I quite understand, and I fully sympathise, if I may say so. Would it help at all if the type of officer who would be likely to serve in a partially excluded area were submitted to the approval of the Governor? I am only putting out suggestions. Would it help?—It would depend upon the Governor, which is again an unknown factor.

D101. But it would be likely to do so?—It would be likely to do so, yes.

D102. From the point of view which I have raised earlier, that if a member of the All-India Service working in a Province was administering a district which was partially excluded and, at the same time, doing his district work, it would probably be a matter in which a member of the All-India Service would, at any rate for five years, according to the White Paper proposals, be recruited by the Secretary of State?—Yes.

D103. And the whole matter would be discussed and gone into later as set out in the White Paper?—Yes, but it has been going to be gone into and discussed for so long that I thought the time had now come for it to be discussed and gone into.

D104. I was discussing the issue of future recruitment which is another issue?—Yes.

D105. I want to ask you one or two questions about the representation of the backward areas. The matter, I think, has been dealt with in the Franchise Committee Report, and I would like to ask the valuable help of these witnesses as to the best method of representing the aboriginals in the legislatures in the Provinces. Could I ask Dr. Hutton if he has any suggestions to make as to the best methods? You mentioned a tribal durbar. Have you any suggestions as to how a representative of these areas is best elected to a Provincial Legislature?—(Dr. Hutton.) No, because it

seems to me that the real representatives of the areas are the older men, who are familiar with custom, and who are recognised by the younger people as representing them, but who are quite incapable of coming forward in anything like a legislative assembly. That is the great difficulty. The man who really represents the feeling of his village is not the educated man who can come forward in an Assembly and play a part, but one of the old men of the village who retains the traditions of his tribe. For that reason, I would urge total exclusion wherever possible.

D106. That does not answer the point as to how, according to the White Paper Scheme of Representation in the Legislatures in the Schedule of Representation you would organise the representative of the aboriginals?—(Wing-Commander James.) I think it would be so valueless that it should not exist at all. (Dr. Hutton.) Nomination, I think, would be best.

D107. I think earlier on Wing-Commander James pointed out that the representation was not sufficient?—(Wing-Commander James.) And could not be made sufficient. I do not see how it could possibly be made worth their having.

D108. In that case, the argument that there is not enough does not prevail?—No; I use the argument to show how they had been ignored. I was not complaining that they had not enough.

D109. Have you any further suggestion as to how the representation of the aboriginals in the Provincial Legislatures could be put forward?—No; I am for the maximum of total exclusion which would remove them from the Legislatures altogether.

D110. That does not help in an area which might be a partially excluded area in which there are many individuals among the aborigines who are located there?—I beg your pardon. That is quite true; it does not. I think they would have to take their chance in the general constituencies. I do not see how they could do otherwise. (Dr. Hutton.) I think in that case it would be possible for them to elect through their own tribal organisation where it survives. You might work a franchise on a tribal basis which was not governed by property. A man recorded as a member of a tribe and not as a member of a caste might have a vote as head of his

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household or tribe. You might work something on that line. I do not say it would be satisfactory. It would be better than no representation of any kind and no exclusion.

D111. We were naturally talking of those areas which were partially excluded?—Yes.

D112. You think that is the best method?—Yes. But I do not advocate the partially excluded areas. I do not wish to be understood to be advocating that.

Lord Eustace Percy.

D113. You have proposed on page 20 that a number of areas should be partially excluded?—Yes; where total exclusion is not possible. I would admit that there are areas where that is the only way.

Mr. Butler.

D114. You have admitted that there are some small villages of Gonds or Bhils in the midst of an area where no other course would be possible. Both witnesses have admitted that, and we are trying to meet difficulties which you have yourself raised?—Yes.

Sir Hari Singh Gour.

D115. I want to ask Dr. Hutton whether the conditions he has described in Assam apply all over India and in Burma, the Shan States, and so on?—I am not certain that I have described any conditions in Assam.

D116. The aboriginal tribes in Assam occupy certain localities?—Yes; that is true partially of other parts of India, certainly.

D117. But can you say the same thing occurs in the other Provinces?—I should say it occurred in the Agency tracts in Madras; in certain districts of Chota Nagpur, not all over, but in the Palamau and Ranchi Districts; the Domini Koh, in the Santal Parganas; the Kolhan in Singhbhum; Lahaul and Spiti, undoubtedly in the Punjab; and probably areas in Southern Madras with which I am not acquainted; Nicobar Islands and Laccadive Islands; part of the Central Provinces. I do not know the Central Provinces well enough to give any areas; the Chanda Zemindari.

D118. You said that the Hindu and Muhammadan law governs the aboriginal tribes?—I did not say that quite.

D119. What did you really say?—I said the Courts administered Hindu and Muhammadan law.

D120. Do you think that that is wrong?—Yes.

D121. You remember the declaration made by Warren Hastings in 1775 and 1776 which became the Regulating Act a year later?—No.

D122. In which it was laid down by Parliament that the Hindu law shall apply to Hindus, and Muslim law to Muhammadans, and that excluded everybody else?—Yes.

D123. And in Calcutta the Council had pointed out that the Hindu law applies to Hindus and let everybody who was not a Musselman be governed by Hindu law, and that was applied by the British Courts. That has been going on for about a century and a half?—Quite so. That is one of the things I am objecting to.

D124. Your complaint therefore is of the past?—And the present.

D125. The difficulty has now arisen that that law has now become stereotyped in the case of many aboriginal types who have been following *volens*, the family law, and accepting it?—In some cases, that is true; in many cases not. I do not think it applies among the Gonds of the Central Provinces at all.

D126. Many of them claim to belong to the Kshatriyas, the ruling classes?—Some of the sophisticated Gonds do.

D127. And the rest would belong to the Hindus?—Many of them; not all of them.

D128. Have you noticed that these tribes are gradually becoming assimilated to Hinduism?—In some cases, certainly. In one case, at any rate, to Muhammadanism.

D129. But in the bulk of them the tendency is to gravitate towards Hinduism?—Yes.

D130. For how long has this process been going on?—I imagine for 2,000 years.

D131. Therefore, if you were to lock them up in compartments of their own, do you not think this process of evolution would be retarded?—Not necessarily. Nobody wants to interfere with their religion; at least, I do not.

D132. At the present moment, every member of the aboriginal tribe when he leaves the village and comes to the town becomes a member of the Hindu community (I am speaking of the bulk of them; some of them become members of the Muslim community as well) and they take part in the daily life of the Hindus

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and mix with them, and they are not regarded as depressed classes at all?—They are usually regarded as depressed classes when they become Hindus.

D133. Not the Gonds?—In Bihar and Orissa, certainly.

D134. That may be so, but in the Central Provinces the Gonds and the Bhils are not regarded as depressed classes?—Are they not?

Sir *Reginald Craddock*,] They governed the country for four centuries.

Sir *Hari Singh Gour*.

D135. Quite so. As a matter of fact they are proud of the fact that they were the rulers of the country?—In Madras, certainly they are treated as depressed classes.

D136. So the observations you have to make would be qualified to the extent that conditions throughout India are not the same and a generalisation dealing with the aboriginal tribes might be true as regards one province or locality, but would not be true of another province or another locality?—It might not be equally true as regards all provinces. I admit that you cannot generalise completely for India. It is a very large place.

D137. Looking at the question from the dual aspect of administrative and legislative protection and judicial protection so far as legislative protection to the aboriginal tribes is concerned as far back as 1874, the Indian Legislature enacted the Scheduled Districts Act which lays down that no Act of the Indian Legislature will *ipso facto* apply to the scheduled districts unless it is expressly extended to those districts?—Yes.

D138. And the scheduled districts were mostly the backward tribe areas where the aboriginal tribes and other backward races lived?—Yes, certainly some of them, anyway.

D139. Do you think that in spite of that Act, the aboriginal tribes have suffered?—I do.

D140. To what do you ascribe their suffering?—There are various causes in different places.

D141. So you are not able to generalise even on that ground?—No.

D142. If, therefore, we do not know what are the causes which lead to these sufferings on the part of the aboriginal tribes, we cannot lay down one general rule as to how to deal with them?—I

would not say that. One may not know the causes of an illness, but one may know the general rule for applying a cure.

D143. For example, in one of your paragraphs it is stated that the tribal law amongst certain aboriginal tribes legalises a forcible marriage—marriage by capture?—Yes.

D144. It is in Memorandum No. 86?—Yes.

D145. I read to you that passage in your memorandum: "Further, wherever aboriginal areas come within the scope of the activities of the High Courts, actions which are perfectly correct according to aboriginal standards are liable to be punished as contrary to law. Thus, quite recently, a Bhil was convicted and sentenced for effecting a marriage by capture, which is a recognised form of Bhil marriage and which would undoubtedly have been acquiesced in by the society in which he lived, had there been no possibility of moving Courts." You think you would like to stereotype a law of that kind?—I would not stereotype the law. It is the stereotyped law that I am objecting to. It is the High Court that has stereotyped the law.

D146. The High Courts say that it is against common morality and the freedom of man that a man should run away with a girl and seize her by force and that society should tolerate that as a marriage, and you say that the High Courts were wrong in punishing the man because he used force in obtaining a wife?—It was probably a put-up job. All those runaway marriages are.

Sir *Reginald Craddock*.

D147. *Gretna Green*?—The trouble comes in when you stereotype the law and do not allow a case like that to be settled by local custom. I quote a definite case later on from Assam. Everybody knows what happened there. The man ran away with a girl because he could not pay the price demanded by her parents, and the parents brought a case in Court *pro forma* simply in order to save their faces. There was no intention of harming the man. Everybody was horror-struck when the man was sentenced to penal servitude for life.

Sir *Hari Singh Gour*.

D148. I am not horror-struck if a man runs away with a girl without her consent, whether the father was reconciled

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to it or not; I would still regard the man as guilty of abduction?—On paper.

D149. With regard to the nature of the protection that you advocate for the backward aboriginal tribes, you said that they should be excluded altogether from the White Paper scheme?—I should like to see them excluded, yes.

D150. Completely excluded and constituted petty States?—I think that is best.

D151. Is that the view of Commander James?—(Wing-Commander James.) I did not put the suggestion forward at all.

D152. Do you approve of that suggestion?—I have not thought it out. I only saw Dr. Hutton's Memorandum for the first time yesterday and I had never met Dr. Hutton before.

D153. Do you think, Dr. Hutton, that that is a feasible proposition?—(Dr. Hutton.) Yes, I think so, in certain cases, but I do not think so in all cases. I think in many cases it would be a most satisfactory solution.

Sir Reginald Craddock.

D154. You mean people like the Lushis?—Yes, the Lushis. I see no reason why they should not run their own tribal states ultimately.

D155. And the same in Burma?—Yes, the same in Burma. I think it could be done in Lahaul and in Spiti, probably.

Sir Hari Singh Gour.

D156. That is to say, such a thing may work out in some cases?—Yes; I do not think you could do it in all cases.

D157. Then I think, you said, Dr. Hutton, that you would let justice be administered by tribal organisations?—I am not sure that I said that.

D158. You spoke in your oral statement about the tribal organisations?—Yes.

D159. Have they got any tribal organisations, as distinct from punchayets, which dispose of caste questions and questions dealing with ritual and the rest?—It is not necessarily identical with the punchayets. In Assam it would be generally a clan meeting within a village or part of a village. The organisation would vary tremendously in different parts of India.

D160. But do these organizations deal with secular matters?—Yes, certainly, secular rather than ritual. They do not deal with ritual matters.

D161. They do not deal with matters of religion and ritual?—I do not think so.

D162. They will not deal with questions of succession, inheritance, partition, and the rest of it?—Yes.

D163. They deal with all those things?—Certainly.

D164. But in the 150 years of British rule in India has any organization or any British officer ever pleaded in any court of law that such a custom existed? Are you aware of a single case in which such a plea was taken successfully or unsuccessfully in any court of law?—I am not sure that I quite follow your point.

D165. If there were a tribal organization, that would deal with questions of domestic law?—Yes.

D166. Questions such as partition, marriage, succession, and inheritance, as distinct from the general Hindu or Muhammadan law, as the case may be. I should have expected that such a plea would have been taken in a court of law during the 150 years of British rule in which the courts have been administering justice according to the customary law in the absence of any rule to the contrary?—But we do administer the customary law; my courts often administer the customary law.

D167. If they do administer the customary law, then what is your complaint against the administration of the courts at the present moment?—There is nothing against the courts that administer the customary law. What I am afraid of is that once the district is regularized the administration of the customary law will be prevented.

D168. But you have no complaint at present?—There have been complaints. In some parts of India, certainly I have a complaint. I think the law that administers the Succession Act in certain Provinces has not always administered the Gond law fairly. The number of tribes excluded from the Succession Act by Government Administrative Orders in the Central Provinces is only eight, whereas there is a very much larger number of tribes in which the succession customs are not those of the general law.

D169. The point I am making is that it is open to those tribes to set up a customary law at variance with the general law if they wish to enforce that custom?—I do not think it is open to them under their present conditions, in practice; theoretically it may be open to them.

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[Continued.]

D170. But what is the impediment in the way of pleading, setting up a custom at variance with the general law?—Finance, probably.

D171. And the assistance that they would get from the lawyers you want to do away with?—Certainly, I do; I should like to have lawyers totally excluded.

D172. You would like to do away with the lawyers and with the High Court?—And with the High Court.

D173. The lawyers are the only people who can advise them to set up a custom because that would be a very good plea in their case if they wished to set it up in derogation of the ordinary law?—We get on very well without them in the hills.

Mr. R. A. Butler.

D174. Is not it true that the pleader would have to get the permission of the Deputy Commissioner before entering a district?—In some districts that is true; in some it is not; it depends upon the Province and the local orders.

D175. That ban would appeal to you?—It is required in some districts yes. I do not know that it applies to the whole of India.

D176. It is a proposition which appeals to you?—It certainly does, very strongly.

Sir Hari Singh Gour.

D177. What is the Deputy Commissioner's position in giving information?—In my own case I should have regard to the financial position of the parties, and as to whether I thought a pleader would be likely to obscure the issue or not. I have found pleaders extremely useful but there are cases in which I should prefer that no pleader should appear, because there would be some chance then of getting at the truth.

D178. Would you not be prejudging a case in deciding a question by finding out whether a pleader should be appointed, because you do not know what the pleader would set up?—Exactly. He would set up all sorts of points which the parties would never think of for themselves, and would therefore introduce an element of injustice into the decision.

D179. But that is an objection to pleaders as a class, not in relation to their appearing for their aboriginal tribe; it is an objection to the class appearing in the courts at all altogether, is not it?—Not quite; I do not think that is a fair assumption.

D180. It may be a difference of degree but not of kind?—Quite so. I admit that. May I add that Sir John Simon came to the district in which I was serving and he said, "Do you allow lawyers in your Courts?" I said: "They are not allowed without the permission of the Commissioner, which is only given for good and sufficient reasons." He said: "Whatever you do, do not let them come in. They will only ruin the place if they come in."

Dr. Shafa'at Ahmad Khan.

D181. Dr. Hutton, I suppose you think that Section 52 (a) of the Government of India Act dealing with the backward tracts has not worked well?—I am afraid I do not know what Section 52 (a) of the Government of India Act is.

D182. You are not satisfied with the proposals in the White Paper?—No, I am not satisfied with the proposals—quite.

D183. You think that they should go further?—I think they should go further, yes.

D184. You agree, generally, with the recommendations of the Simon Commission?—As regards the backward tracts, yes.

D185. Could you give me, very briefly, an estimate of the area of the backward tracts? Besides Assam, what other tracts would you include in the area of the backward tracts?—I have given you that on pages 19 and 20 of my Memorandum.

D186. Are you aware of the fact that the Government of India opposed the proposals of the Simon Commission?—Yes, I am aware of that.

D187. Are you also aware of the fact that a number of local governments have not agreed with the proposals of the Simon Commission?—No, I am not aware of that fact, but I should think it is quite likely.

D188. Are you aware of the fact that the Punjab Government have actually said that there is no need for the protection of Lahore?—I agree with the Punjab Government entirely.

D189. The Madras Government said also that the proposals of the Simon Commission regarding the backward tracts go too far and that a slight modification of the existing practice would be quite suitable?—I disagree with the Madras Government.

D190. So that, in your opinion, the backward tracts which exist now must

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[Continued.]

be retained in their entirety?—Yes, and I should like to see them added to.

D191. And the possibility of the fusion of the backward areas with other areas should be taken into account?—I should not say that. I should leave the backward tracts to fuse themselves at any time afterwards, if they wished to do so, of their own motion.

D192. In holding that opinion, you crystallize and make rigid the arrangements of the backward tracts, not only for the wholly excluded areas, but, as you propose, for the partially excluded areas?—I see no difficulty in an area applying to be included with an adjacent district or Province, and, if the Province were willing to take it in, to include it ultimately.

D193. You agreed, in reply to a question, that a process of assimilation and absorption is going on?—In certain areas it is certainly going on.

D194. Do not you think that the process will be checked as you go further if you make your arrangements so rigid as to place the backward areas in water-tight compartments?—(Wing-Commander James.) I would suggest that it would be accelerated, because if you do not exclude them they would absolutely certainly be starved by the rest of the Province.

D195. Do you agree with Commander James's opinion, Dr. Hutton?—(Dr. Hutton.) Yes, I think I do. I had not thought of it in that light. I should like to think that over. I am not quite sure whether I have read your question in the same light as he has. I think Commander James's point is that if the area is not excluded it will be starved of money and will have no chance of development on its own lines. I entirely agree with that.

D196. Are you not aware of the fact that even according to the conditions of the White Paper the backward tract may not be starved at all because the Governor may have power to allot funds for the development of the backward tract?—(Wing-Commander James.) That would be so if you assumed that the White Paper does not mean what it says when it allots the whole of the Forest revenue to the Province.

D197. Your contention is that the revenue derived from the forests, which are inhabited exclusively by primitive tribes, should be devoted exclusively for the development of that particular area?—I would not make it as rigid as that, but that is the general idea.

D198. Are you aware of the fact that this was the claim of the hill tribe put forward by my district, and they demanded that they should be allowed to cut any amount of timber they liked from the whole forest, and the Government quite rightly pointed out that if this was done the whole Province and the village would be seriously affected? If your principle is carried out, do you not think that the revenue derived from those forests will be devoted almost exclusively to a particular area and the Province cut up into spheres of influence or spheres of revenue earmarked for a particular area?—No, I do not presuppose any tariffs or financially rigid barrier.

D199. But you do propose earmarking revenue?—No. All I pointed out was that under the existing proposals, without qualification, the whole of the revenue from the areas inhabited by the primitive tribes is allotted to the Provinces.

Mr. R. A. Butler.

D200. May I say that that would not prohibit the Governor from making a resolution or passing an Act which would assist the partially excluded area and so help the aboriginals? The powers necessary for this are all to be found in the White Paper?—But he would do so presumably through an Order in Council. Lord Eustace Percy.] No.

Mr. R. A. Butler.

D201. His powers are derived from the procedure known as that of his "special responsibility," which gives him full powers to assist the partially excluded areas in the way that Commander James desires?—Is there not a perpetual source of conflict between the Governor and the Legislature which will normally be thinking in terms of its constituents and not of the hill tribes?

Sir Hari Singh Gour.

D202. May I point out that the Legislature cannot even ask questions relating to the backward tribes?—True, I accept that, but equally the Governor, according to the Secretary of State's reply the other day, has no power of intervention whatever with regard to forest matters. I am merely pointing out that that appears to be a complete conflict of principle in the White Paper.

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Mr. R. A. Butler.

D203. He has a perfectly full power under his special responsibilities. I think Commander James is confusing the question of forests in India with the question of the future aboriginal population?—I am submitting that they are so extremely mixed up that the present proposals are conflicting.

Mr. R. A. Butler.] I do not agree.

Dr. Shafa'at Ahmad Khan.

D204. Commander James, even under the existing rules framed by the Government of India in accordance with Section 52 (a) of the Government of India Act, the Government can allot funds for the development of backward tracts without going to the Legislative Council for the purpose?—I am very glad to hear it.

D205. Then would not you be satisfied with the existing arrangement?—No.

D206. Why?—Because I see in the existing arrangement there being a perpetual source of conflict.

D207. You would like to have definite sources of revenue placed at the disposal of the Governor for that particular purpose. Is that what you mean?—No. All I have pointed out is that the normal source of revenue derived from the area inhabited by the primitive tribes is at present allotted without qualification to the Provincial Government.

D208. But of the total amount a certain amount is taken for the development of the backward tracts? Does not that come to the same thing?—It might do; I hope it would.

D209. But has it not done so actually?—It may have done so in the past; I am trying to safeguard the future.

D210. But is not it an adequate safeguard if the Governor is given power of allotting funds without going to the Legislative Council?—I am not competent to express an opinion upon that. I have put forward my fears.

D211. Then your conception of a separate cadre for this service is intimately connected with Forest Service?—I think in the interests of economy it would have to be so.

D212. You would differ from Commander James on that point, Dr. Hutton. You would like to have a separate cadre, not necessarily connected with the Forest Service?—(Dr. Hutton.) No, not necessarily so. I should like to have the opportunity of drawing officers from the Forest Service.

D213. Of course they have an opportunity of drawing officers from other Departments also?—Certainly.

D214. You would not restrict it to the Forest Service?—No.

D215. You would, Commander James?—(Wing-Commander James.) I would not restrict it to the Forest Service, no.

D216. But generally you would restrict it to the Forest Service?—Not even that. I think at the present moment, to start with, it would probably be found that most of the officers available and suitable were in the Forest Service mainly because that is the Service mostly in touch with the primitive tribes.

D217. It would be an All-India Service?—I take it so.

D218. How could the officers of the All-India Service know the numerous backward tracts to which they might be assigned because, I take it, there is no positive factor uniting the various backward tracts; the only negative factor is that of being backward?—That is so.

D219. How can you be really certain if there are a tremendous variety of customs throughout India?—That difficulty exists at present as Dr. Hutton pointed out in a reply to a previous question.

D220. Would not it be better to have Provincial Officers appointed by each Province for this service instead of an All-India Service?—It might be found better to do it that way.

D221. And more economical?—It might be found to be so. I only put it forward as a tentative suggestion.

Dr. B. R. Ambedkar.

D222. Dr. Hutton, in reply to a question by Major Attlee, I think you stated that you would prefer that the administration of the excluded areas should be a central subject, rather than a provincial subject?—(Dr. Hutton.) That is my own feeling.

D223. I just want to ask this. When you say it is to be a central subject, do you propose that it should be a reserved subject or a transferred subject?—A reserved subject.

D224. I just want to turn to some other matters which have been discussed in your paper. I think you are proceeding upon the basis that these people should under no circumstances come within the purview of the new constitution?—That is so.

D225. That is the hypothesis and the basis upon which you are proceeding?—

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I admitted that in some circumstances where they are very scattered living among other populations, it would be otherwise.

D226. But in the main, that is the hypothesis upon which you are proceeding?—Yes, in the main.

D227. What is the ideal that you have before you for these people? I will crystallise my question so that you may answer it better?—The minimum of interference by anybody.

D228. Let me put it in the way I visualise the question. Is it your ideal that these primitive people should continue to remain primitive people without having anything to do with the affairs of the rest of India, or do you propose that the destinies of these people should be so regulated that in course of time they should cease to be an isolated part of humanity and take part in the public affairs of their country as the rest of Indians are doing now?—I think that the second is my ideal.

D229. That they should not continue permanently as primitive people?—The question would have to be that, if possible, ultimately they should take a part in the life of their country.

D230. That is what I say?—But it is possible that in some cases you might never be able to achieve that ideal.

D231. Let us, first of all, ascertain what the ideals are?—Yes.

D232. I am not introducing the religious question at all, whether they should be this or that?—No.

D233. What you do point out is this: You do say, and I think it is your ideal, that they should become part and parcel of the civil society?—Yes.

D234. And outgrow their tribal condition?—Yes, I think that is necessary.

D235. Let me therefore proceed further. If that is the view, is it not desirable that there should be a common cycle of participation both for the civilised people of India and for these primitive people?—Not yet.

D236. So that there may be a percolation of the ideas which are agitating the minds of the civilised part of Indian society into this primitive class of people?—I think the ideas will percolate without any difficulty.

D237. How?—What troubles me is that unless they are separated they are likely to be destroyed by too abrupt contact. That is what has happened nearly everywhere else in the world.

D238. I do not know but I do want to submit to you for your consideration whether if, as you have admitted, that is your idea, namely, that they shall some day become part of the Indian society, segregation, and so complete and so rigid a segregation as you propose, is the proper way for the realisation of that ideal?—I think it is the only possible one myself.

Sir Reginald Craddock.

D239. Might I put a question? There are various educational agencies going on in some of those tribes. Is not that the case?—Yes, certainly.

D240. Are they chiefly missions, or was the Government any schools?—The Government has a number of schools.

D241. That would be one of the points that you would refer to in connection with the improvement of these places, would not you?—I should.

Dr. B. R. Ambedkar.

D242. I want to proceed a little further. I see from your paper (correct me if I am wrong) that you are troubled about two things. You think that a contact or incorporation, if I may use that term, of the educated or the advanced or the civilised Indians, and of the primitive people in one constitution is likely to result, first of all, in their exploitation by the advanced classes or, shall I say, the civilised part of the Indian society?—Yes.

D243. Secondly, I suppose I am right in summarising it thus, that you are afraid that sufficient attention will not be paid to them in the new Council?—Yes.

D244. Let me put to you one question: I will take the case of their land. Is it not a fact that this question, namely, of keeping the land in the hands of the primitive people as far as possible so that they may not be rendered a class of landless labourers, is also the problem which is before many of the agricultural classes in India, and that even for their protection it has become necessary to pass Acts like the Deccan Agricultural Relief Act in Bombay and the Alienation of Land Act in the Punjab and several other cases?—I believe such Acts have been passed.

D245. My suggestion is this, that if these primitive people are brought under the same constitution as the rest of India they would not be quite alone in their demand for keeping the moneylender out and seeing that the land remains in the

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hands of those who cultivate it. There would be many others who would have a similar demand to make in the Legislature. The point I want to make is that they would not be isolated?—The point which I should be inclined to answer was that the proof of the pudding was in the eating, and, as far as experience went, it has shown that they always have been done out of their land.

D246. But, Dr. Hutton, would you mind making this distinction, that the Legislatures, as they are composed to-day, and as they were composed some time ago, are not going to be the same as the legislatures that will be composed under the White Paper?—Yes.

D247. You would have a certain amount of representation of the depressed classes in the various Legislatures. You would have a certain amount of representation assigned to labour, and you would have, I am sure, a certain amount of representation drawn from the general electorate who would favour the poorer classes. The experience of the last Legislatures would be no safe guide in a matter of this kind?—I would sooner be on the safe side and exclude them.

D248. I do not know, but you are not prepared to deny the fact that they would have many friends in the Legislature?—I would not admit that. I should like to be convinced first that they would have many friends. There may be others with similar interests, but they would have very little in common with them individually.

D249. Yes, but I mean so far as the general question of protection for a class similarly situated is concerned?—I can conceive that a Musselman cultivator in Silhat would demand the maximum of protection for himself and the maximum of non-protection for his neighbours.

D250. Do you think the Legislature would go to the length of saying that certain laws which are necessary in the interests of Indians are not to be extended, and that the protection of those laws is not to be given to the primitive classes?—No, I do not think they would go as far as that.

D251. How would the discrimination arise?—I think the primitive classes might have extreme difficulty in obtaining the necessary protection. There is no guarantee with the depressed classes that the cultivator will obtain the necessary protection under the new constitution.

D252. Quite true; I agree with you. There can be no protection that the other classes probably would not club together and prevent protection being given to some other minorities? The fear is legitimate, but taking into calculation all the forces on the one side and all the forces on the other, the point I want to make to you is that the fear, that one or two, or a few representatives of the primitive classes in the Provincial Council will feel that they are overwhelmed by the forces on the other side, is not quite justified by an analysis as I am presenting it to you of the composition of the future Legislature as it will be under the White Paper proposal?—In view of the difference of race, I think it is possibly justified, at any rate in certain places.

D253. Take the question again of education. I happen to know something about these primitive people in the Bombay Presidency. We have a backward class?—Yes, I know.

D254. We ourselves are not very far divided from them?—I know.

D255. Educationally speaking, one could not really say that a good many people in India are in less need of education than the primitive or the backward people?—You could not say what?

D256. You could not say (take, for instance, the depressed classes) that bare educational need is less?—You could not say that it was less.

D257. One could not say it?—No.

D258. I have been sitting on the backward class board in Bombay, which is a composite board for the depressed classes and these primitive people?—Yes, in certain cases the primitive people are very much more educated.

D259. Therefore, as I say, taking their educational need, in the legislative Council, they would not find themselves isolated?—They might do.

D260. You would desire that they should be completely excluded, and their need, such as education, which I think is the greatest need of these people myself, should be met entirely by revenues supplied by the Governor under his special responsibilities?—Yes.

D261. I want to put this to you: whether a Governor would at all go to the length of providing what he thought was a sufficient amount of funds for the education of the primitive classes if his Ministers did not support him?—That is a serious difficulty.

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D262. If there is something in the point that I have put to you, would not it be desirable that some representatives of these people should be in the Legislative Council so that a Minister may be dependent upon their votes, and may be amenable to their wants?—An odd vote or two would not be likely to affect a Minister.

D263. I do not say one or two. You may have a small number, but, assuming they have adequate representation in the Legislature, would not the Minister be dependent upon their votes, and, therefore, he might be more amenable to their wants?—Theoretically, but not in practice. Their numbers would be so small.

Dr. B. R. Ambedkar.] In politics a single vote might turn the balance.

Lord Eustace Percy.

D264. I thought Dr. Hutton's recommendation was that they should be excluded from the purview not only of the Province but of the Governor also, and that they should be administered from the centre. Is not that so?—That is what I should on the whole, prefer. I have stated in my memorandum that in the case of the proposals of the White Paper for the totally excluded areas in which the Governor acts as the agent of the Governor-General, the White Paper proposal is satisfactory. I do not say I should prefer it.

D265. I thought from your proposals for setting up petty States that you intended that it should as far as possible be a central function?—My intention was that it should be central as far as possible, certainly.

Dr. B. R. Ambedkar.

D266. Even in that case, the criticism I have offered would be equally applicable even if the subject was made central, because the Governor would have to certify the amount necessary for the administration of the subject and, if the Ministers in the Central Government objected to spending that amount of money, the conflict would still be there; it would only be transferred from the Provincial Field to the Central Field?—I am assuming the Minister would not have a word in it.

Dr. B. R. Ambedkar.] But my point is that the Minister would have a word, because there would be other rival claims for the expenditure, and a Minister cannot be expected to be interested in primitive peoples who are not part of the Legislature.

Dr. Shafa'at Ahmad Khan.] Would not the representatives of the primitive people in the Legislature generally combine with the depressed classes?

Dr. B. R. Ambedkar.

D267. That is what I am visualising, and, therefore, they would have many friends?—I do not think the representation would be affected.

D268. If I felt as pessimistic as you feel I should at once say: "I do not want this constitution at all"?—But I do not, for the primitive tribes.

Lord Eustace Percy.

D269. May I ask one or two questions, Dr. Hutton, first on a special point which is not covered by your memorandum? You may have seen a letter in the Press the other day, raising the question of the delimitation of the Assam-Burma Frontier in connection with the primitive tribes?—No; I did not see the letter.

D270. Have you got any views, supposing that Burma were separated from India, as to the desirability of changing the present Frontier so as to have a homogeneous block?—I think what I proposed to the Government of Assam, but it would not meet with approval there, was that there should be a sub-Province of Burma which would embrace the North-East Frontier Districts of Assam with the North-West Frontier Districts of Burma. The people in Assam on the Assam side of the present boundary are much nearer to the Burmese than they are to the Indians. Their languages are exactly the same in some cases as those on the Burma side, and there is no difference of race at all, and there is constant communication, so far as there is any communication at all—it runs across from the Hukong Valley into the Naga Hills on the Assam side. I think it would be impossible to put the Assam Districts directly under a Burma administration because of the difficulties of language and of the distances and of communication through the hills but I do think you could establish a centre somewhere near Manipore, for instance, from which it would be possible to administer as Commissioner or Chief Commissioner, under the Burma Government, a block of Frontier Districts of Assam and North-West Burma.

D271. I suppose in the event of a separation between Burma and India the military strategists might raise objections to that on grounds of forming a

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defensible frontier?—Between Burma and India?

D272. Yes—supposing we are going to argue those questions between the two places?—I do not know how the military strategists would make objections to that frontier; it is a very difficult frontier indeed. There are only three possible routes for a railway, I believe, through from Assam to Burma.

Sir *Hari Singh Gour*.] What about the air?

Lord *Eustace Percy*.

D273. We cannot go into that. Perhaps, Dr. Hutton, if on thinking it over you have any further views which you would like to state on that question of the rectification of frontier or special arrangements of that kind you would send them in to the Committee, would you?—Yes, I will certainly.

D274. Now I should like to get clear, if I might (I am still not very clear about it), the precise difference between the proposals you have put forward and the proposals in the White Paper. Take the totally excluded areas. I understand, of course, that you attach importance to the maximum number of areas being totally excluded, but apart from that on the whole you regard the White Paper provisions as to totally excluded areas as fairly satisfactory?—Yes, the proposals are fairly satisfactory.

D275. And Commander James agrees, except that he wishes—?—(Wing-Commander *James*.) Further delimitation.

D276. And you wish specifically to put the excluded areas under a Central Government and not under the Province?—As the Simon Commission recommended.

D277. You are not content with the fact that under the White Paper proposals the Governor will administer them directly in his own responsibility and, doing so, will be subject to the directions of the Governor-General, as he is in all respects in which he is not a constitutional Governor?—No; I am apprehensive of the phrase “for the time being” in paragraph 107.

D278. “For the time being declared to be an excluded area.”?—Yes, “for the time being”—what does that mean?

D279. I thought Dr. Hutton had already given evidence that he did not necessarily want the exclusion to be permanent—for all time?—No.

D280. That is what “for the time being” means, is it not?—The whittling down in the White Paper is so exten-

sive that I am made suspicious of mere phrases.

D281. We will see before I have finished my questions as to how extensive it is, but in any case except for those words, “for the time being,” which have not struck me as being very sinister, you are more or less satisfied?—Yes.

D282. What I do not understand about Dr. Hutton’s and Commander James’s evidence with regard to the administration of these areas is this: I gather that the property, as it were, in the whole area, being outside the White Paper, being outside the Province, would vest in the Central Government or in the Provincial Government. I am thinking of the forests—what under your idea of an area so completely excluded might be erected into a petty State of its own: How would you reconcile the administration of forests in which the Province might be extremely interested, as affecting water and so on in the Province, with the Provincial administration of forests as a whole and with the Provincial agricultural policy as a whole?—I think it is a matter for further inquiry. As I say, I did not put forward a cut and dried watertight scheme.

D283. You have been speaking of a conflict between the Governor and his Ministers, but surely a conflict between a separate forestal administrative service run from the centre and the interests of the Province which may depend upon the forests which it controls is a far more dangerous source of conflict, is it not?—It might be, but presumably the Simon Commission when they made their recommendations had that in mind.

Lord *Eustace Percy*.] We have got to form our own opinion; we cannot take the Simon Commission, of course.

Major *Attlee*.

D284. I do not think the Simon Commission recommended the forests from your point of view at all. The forests were recommended by the Simon Commission to be transferred?—No. I put that forward as a suggestion for the economical administration of an excluded area.

Lord *Eustace Percy*.] Perhaps Dr. Hutton will deal with this difficulty, because I do not understand what a totally excluded area is in which the provincial forest official and the provincial forest policy prevails.

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[Continued.]

Dr. B. R. Ambedkar.

D285. If I may say so, the area is not excluded; it is the people who are excluded?—(Dr. Hutton.) No, the area is excluded, as I read the White Paper. Is there any definition of a totally excluded area in the White Paper?

Lord Eustace Percy.

D286. No, there is not?—If the area is excluded, clearly the forest must be excluded also.

D287. And it is essential to your proposals that it should be the area which is excluded because you want the whole administration of land ownership to be in the hands of the excluded administration?—Yes, certainly, but I see that the funds for the administration need not necessarily be drawn directly from the revenue of a given district.

D288. No, I was not thinking of that, but I suppose among these totally excluded areas that you have recommended on page 20 of your Memorandum there are several in which the Province as a whole is very much interested in the soundness of the afforestation policy?—I do not think there are very many in the Assam frontier districts. The forests have been mostly already excluded and put down into the plains districts adjoining. The Mikir Hills, I think, have no valuable forests. The Garo Hills have valuable forests—that is one.

D289. I am not talking of the intrinsic value of the forest in itself but the value of the forest existing, so to speak, to prevent denudation?—I think you must separate that. The principle of denudation raises the whole question of cultivation. It is an extraordinarily difficult thing.

D290. When you say you must separate it, how do you mean?—You must treat it as excluded from the purview of the Provincial Council.

D291. And the Provincial Council would have to trust to the good will of the Central Government—because that is what it comes to?—Yes.

Sir Reginald Craddock.

D292. I was just going to say apropos of what was going on that the tribal tract, if you set it up, would be governed by regulations, would it not?—Yes.

D293. Therefore you could make regulations about the forest if you wished?—Yes.

Sir Hari Singh Gour.] Under the White Paper scheme.

Lord Eustace Percy.] I quite see that under the White Paper, only if you emphasise the Central Government's control over it you do have more or less possibly a conflict of jurisdiction between the Central Government and the Province.

Sir Reginald Craddock.] Yes.

Major Attlee.

D294. Does not the same difficulty arise where you have separate Provinces; one perhaps may be interested in a part of it from the point of view of water supply and so forth?—Yes, that might easily arise; it has arisen.

Lord Eustace Percy.

D295. I will not keep the Committee a moment, but coming to partially excluded areas, you agree that there must be some areas which unfortunately for them from that point of view could only be partially excluded?—Yes.

D296. Under the White Paper you have a power in the Governor with the consent of the Governor-General to repeal any law applying to those areas which I understand would include excluding the jurisdiction of the High Court in any matters which the Governor-General might please, and so far as I can see under the White Paper the Governor has complete power, acting in his discretion, under the instructions of the Governor-General, to sterilise that area, as it were, from the influence of the Province so far as the body of law in the Province is concerned?—Yes.

D297. I will come on to the question of administration later; but so far as law and the jurisdiction of the High Courts are concerned I do not quite understand what your proposals would add to those?—The position is so obscure that it is not known in Assam how an appeal lying from a partially excluded area would be disposed of or who would dispose of it. I believe I am right in saying that the question has been already discussed provincially and no certain interpretation has been reached as to what would happen under the existing proposals.

D298. What will happen under these proposals?—Yes. There is no certainty as to whom an appeal lies. Who will hear an appeal from an order passed in a partially excluded area? The appeal at present, if the area is a non-regula-

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[Continued.]

tion district in Assam, is heard by the Governor sitting with a Legal Remembrancer.

D299. Surely under paragraph 108 it is perfectly clear that the appeal may be anything that the Governor-General lays down?—They have not taken that view in Assam.

D300. The words I am referring to are: "The Governor will also be empowered at his discretion to make Regulations for the peace and good government of any area which is for the time being an Excluded Area or a Partially Excluded Area and will be competent by any Regulation so made to repeal or amend any Act of the Federal Legislature or of the Provincial Legislature which is, for the time being, applicable to the area in question"?—Yes. It does not give any guidance as to the actual disposal of business arising under a law.

Lord *Eustace Percy*.] The Regulations which can make law can surely determine the administration of the law.

Dr. Shafa'at Ahmed Khan.

D301. Can the Constitution Act as such go into all these details?—No, I do not know that it can. I happen to have had a letter from a colleague in Assam who was called to sit at a discussion which took place at the Headquarters of Government as to how under the White Paper the new Constitution—assuming that the White Paper is accepted as it stands—would act in regard to the Excluded and Partially Excluded Areas. The question that arose was: Would a criminal appeal from a Partially Excluded Area be heard by the Governor or would it be disposed of by the Ministers? There is nothing to show that here.

Lord *Eustace Percy*.

D302. As you will realise, the White Paper is not a legal draft?—Yes, I realise that.

D303. But anyway, so far as that is concerned, there does not seem to be very much difference between your proposals and my interpretation of the proposals of the White Paper?—No.

D304. Then as regards administration, I gather that your proposals confine themselves to this really, that the Governor should have power to instruct any officer in a Partially Excluded Area to exercise any powers of expelling undesirable residents in that area?—Yes. It would be very difficult to exercise powers in the Partially Excluded Areas.

D305. That is what I was going to put to you?—That is why I am pressing for greater use of total exclusion.

D306. I was just going to ask you whether you saw how such a power could in practice be used except within very narrow limits?—It would be very difficult indeed in Partially Excluded Areas. I am not sure that it could be exercised.

D307. I think that is all I have got to ask you. I do not know whether you would like to add anything to your evidence, Dr. Hutton?—No, I do not think I have anything to add.

D308. Or you, Commander James?—(Wing-Commander *James*.) I would only like to say this, that I have not put forward any of these suggestions with a view to being obstructive to the White Paper proposals; in fact, my idea was solely to make the White Paper proposals more workable by not mixing up the very small boys with the big boys.

Lord *Eustace Percy*.] I quite understand. I think you have put the issues very clearly before us.

Mr. *R. A. Butler*.] I think we all understand that, if I may say so.

Lord *Eustace Percy*.] We are very grateful to you, gentlemen. Thank you very much.

(The witnesses are directed to withdraw.)

SUB-COMMITTEE

1

MINUTES OF EVIDENCE
TAKEN BEFORE SUB-
COMMITTEE D OF THE
JOINT COMMITTEE ON
INDIAN CONSTITUTIONAL
REFORM

Die Lunae, 16^o Octobris, 1933

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