

DYARCHY IN PRACTICE

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BY

A. APPADORAI, M.A., PH.D.

LOYOLA COLLEGE, MADRAS

MEMBER, INSTITUTE OF PUBLIC ADMINISTRATION

WITH A FOREWORD BY

PROF. A. B. KEITH, D.C.L., D.LITT., F.B.A.

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TO THE MEMORY OF
M. A. CANDETH

FOREWORD

Only the progress of events under the new constitution of the provinces of India will enable the making of a just estimate of the value to India of the system of dyarchy. Those of us who criticised the scheme as suggested by Mr. Montagu and Lord Chelmsford, on the score that its safeguards must prevent the effective evolution of ministerial responsibility even within the sphere assigned to ministers, are probably inclined to hold that events have justified our doubts. But it is essential to remember that the idea of relaxing control of Indian affairs was strange to the House of Commons in 1919, and it may well be that nothing more revolutionary than the Act of 1919 could have received acceptance. Certainly in England at that time the prevailing feeling in political circles was not that too little was being conceded, but that grave risks were involved in the extent of the grant.

In any case the history of dyarchy presents the highest interest for all students of politics and history. The materials are abundant and indeed almost embarrassing in their copiousness. To master the evidence and to make effective use of it is a task demanding not merely great industry, but soundness of judgment and the power to discriminate between essentials and minor details. Dr. Appadorai in this study shows these qualities in a marked degree. He has included all that is necessary for a full understanding of the genesis of the system and of its operation. His judgments are sober and well balanced, and it is improbable that anything

can be adduced seriously to affect his summing up of the merits and demerits of the system. The University of Madras deserves warm congratulations on so successful a study in the difficult field of contemporary history by a former Research Fellow in its Department of Indian History.

UNIVERSITY OF EDINBURGH,
14-11-36.

A. BERRIEDALE KEITH

PREFACE

Every new scheme of government is a valuable addition to the political experience of mankind. Dyarchy is a novel experiment in government on a large scale. It was introduced in the Indian provinces in 1921. The system has been at work for well-nigh sixteen years, and is now passing into history. This Essay is an attempt to study the working of dyarchy and estimate its value as a political system. The writer hopes that it may be of some use to students of government and in particular of Indian constitutional history.

The material on which the study is based falls into two well-defined classes. We have, first, the theoretical discussions beginning with 'The Duke Memorandum' which led up to the Government of India Act, 1919. These discussions enable the student to trace the genesis of the system and explain its theoretical foundations. Secondly, there are the records of the practical working of dyarchy in the several provinces—the memoranda of provincial governments, the proceedings of legislative councils and the evidence given by ministers and Executive Councillors before the Reforms Enquiry Committee (1924) and the Indian Statutory Commission (1927). These documents give us some insight into the many complex problems which arose in the working of dyarchy—the relations between the Reserved Half and the Transferred Half of government, the place of joint deliberation and a joint purse, the attitude of the legislature to the two sides of government and the position of the Governor in the constitution.

A list of the relevant documents is given in the appendix.

The writer desires to express his gratitude to Prof. K. A. Nilakanta Sastri, M.A., and Dr. P. S. Lokanathan, M.A., D.Sc., (London), of the University of Madras for willing help rendered in the preparation and publication of the thesis. Prof. Sastri not only suggested the subject of the thesis, but helped in the elucidation of various points that arose in the course of the work and helped in arranging for its publication. Dr. Lokanathan likewise was always ready to discuss the points referred to him; he also kindly read the proofs and offered valuable suggestions.

The writer is deeply grateful to Prof. Arthur Berriedale Keith, D.C.L., D.LITT., F.B.A., who so kindly read the manuscript and wrote the Foreword.

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A. A.

CONTENTS

	PAGE
FOREWORD	.. vii
PREFACE	.. ix

PART I

THE INTRODUCTION OF DYARCHY

CHAPTER I.

THE BACKGROUND	.. 3
(1) The Term 'Dyarchy'	.. 3
(2) Origin and Development of The Idea	.. 9
(3) Alternative Schemes	.. 20
(4) Hopes and Fears	.. 30
(5) Final Adoption	.. 35

CHAPTER II.

THE ESSENTIALS OF DYARCHY	.. 37
(1) The Basic Principle	.. 37
(2) The Transfer of Subjects	.. 38
(3) Dualism in the Executive	.. 42
(4) Mutual Co-operation	.. 50
(5) Progress by Stages	.. 52
(6) Checks and Balances	.. 54

CHAPTER III.

SOME CONSIDERATIONS	.. 56
(1) Social Foundations	.. 56
(2) Communalism	.. 57
(3) Financial Stringency	.. 60

	PAGE
(4) The Political Factor	.. 65
(5) A Bird's-eye View	.. 69

PART II

THE WORKING OF DYARCHY

CHAPTER IV.

THE RESERVED HALF	.. 77
(1) The Governor	.. 77
(2) The Reserved Side of Government	.. 78
(3) Attitude of the Legislature	.. 80
(4) How the Executive Reacts	.. 95
(5) Some Conclusions	.. 112

CHAPTER V.

THE RESERVED HALF VIS-A-VIS THE TRANSFERRED HALF	.. 117
(1) Points of Contact	.. 117
(2) Joint Deliberation	.. 127
(3) In The Legislature	.. 151

CHAPTER VI

FINANCE UNDER DYARCHY	.. 161
(1) Joint Purse vs. Separate Purse	.. 161
(2) Financial Arrangements	.. 173
(3) The Practice	.. 183

CHAPTER VII.

THE TRANSFERRED SIDE OF GOVERNMENT	.. 204
(1) Appointment of Ministers	.. 204
(2) Joint Responsibility	.. 208

CONTENTS

xiii

	PAGE
(3) Governor vis-a-vis Ministers ..	223
(4) The Services ..	240

CHAPTER VIII.

ATTITUDE OF THE LEGISLATURE TOWARDS THE TRANSFERRED HALF ..	258
(1) Two Factors ..	258
(2) Parties ..	266
(3) General Attitude ..	283
(4) Enforcing Responsibility ..	294
(5) Wrecking the Constitution ..	305
(6) Temporary Administration ..	315
(7) The Council and the Governor ..	318

CHAPTER IX.

CONTROL FROM ABOVE ..	320
(1) The General Principle ..	320
(2) Reserved Subjects ..	321
(3) Transferred Subjects ..	334

PART III

SOME CONCLUSIONS

CHAPTER X

AN ESTIMATE ..	347
(1) Introductory ..	347
(2) Defects ..	349
(3) Training in Responsibility ..	365
(4) Achievements ..	375

	PAGE
CHAPTER XI	
THE LESSON OF EXPERIENCE	.. 377
APPENDICES	
A. Statutory Provisions Relating to Dyarchy in the Government of India Act, 1919	.. 385
B. List of Transferred Subjects	.. 391
NOTES AND REFERENCES	.. 399
BIBLIOGRAPHY	.. 419
INDEX	.. 427

PART I
THE INTRODUCTION OF DYARCHY

CHAPTER I

THE BACKGROUND

I

THE TERM 'DYARCHY'

Dyarchy is a compound of two Greek words *di*—twice + *archia*—rule, and means government by two rulers. In political discussions the earliest use of the term is generally traced¹ to Mommsen,² who used it to describe the dual system of government over the Roman provinces by the Emperor and the Senate. The term is, however, found earlier in Thirlwall³ who used it in reference to the dual kingship in ancient Sparta.

The use of the term with reference to Indian constitutional reform has an interesting history. We have it on reliable authority⁴ that the credit of finding this singularly apt name must go to the late Sir William Meyer, sometime finance member of the Government of India; in print, however, it occurs for the first time in a letter written by Mr. Lionel Curtis to the Hon. Babu Bhupendranath Basu.⁵ It is amusing to look back, at this distance of time, on the reception accorded to the term on its first appearance. To many, dualism connoted only perpetual deadlock. Thus Colonel Yate in

the House of Commons said,⁶ "What is the meaning of this system of dyarchy? It is that in every province of India, however different the creeds and languages may be, you are to have two Executive Councils, one composed of British official members and the other of Indian unofficial members. These two executive councils are to be opposed to each other and to fight each other on questions affecting the Budget, the allotment of funds, and everything else." To others, it suggested 'something connected with dacoity';⁷ it was quite a scarecrow, a terrifying word!⁸

The use of these epithets is, however, indicative of the extent to which misunderstandings then prevailed about the kind of government that was going to be introduced in the Indian provinces. Precedents for the scheme were hard to find, for there were hardly any. But it is the nature of the human mind to hanker after the nearest analogies with the help of which it can visualise what is admittedly novel. In a historical analysis, besides the Roman analogy already cited, a kind of dualism was supposed to have existed in Judaea in the first century A.D.—the dualism of the Roman officials and the Hebrew Sanhedrim. In a famous case, and as a direct outcome of this dualism, the Roman governor felt compelled, against his better judgement, to acquiesce in an unjust decision.⁹ Bengal under *Diwani*¹⁰ (1765-84) could be cited as an

example of Double Government, the actual work of administration being carried on by the servants of the *Subha*, but the real authority being exercised by the East India Company. The system of Government established by Pitt's India Act of 1784 was again considered a clear example, the control of the affairs of the company being divided between the Court of Directors and the Board of Control.¹¹ In the closing years of the last century, there was a sort of dualism in the Army administration of the Government of India.¹² The Commander-in-Chief was the executive head of the army, and was responsible for its organization and training, its mobilization for war and promotions in it. His office was known as Army Headquarters. There was also a Military Member of Council who was the head of the Military Department. His Department was entrusted with the control of supply and transport, ordnance, remounts, clothing, medical stores, military works and military finance, and, above all, with preparation of the military budget. The one was an executive officer, the other, administrative. It was pointed out that the federal form of government in Canada and in the United States was an apt analogy ;¹³ the whole of India was supposed to be a classic case of dyarchy,¹⁴ for the country was partly administered by the Government of India and partly by Local Governments. To come nearer home, dyarchy was supposed¹⁵ to

be already present in the 'Provincial Departments such as Irrigation and Prisons working side by side with Land Revenue or Criminal Justice which are controlled by the District Officer'.

The application of the term 'dyarchy' to these different forms of dualism receives some apparent justification from an unexpected quarter. On the plea that a writer, who first uses a term in print, may lay some claim to limit its meaning, Curtis himself thought that it could be employed to signify a principle which might be embodied in any number of different schemes. In this sense, dyarchy becomes 'a normal feature of any system of self-government in any country, so large that you must have Provincial assemblies as well as a National assembly'.¹⁶ It is clear, however, that the dualism of the Government of India having certain functions and the provincial governments having others is a very different sort of duality from that which has been embodied in the Government of India Act, 1919, and which is now passing into history; for the dualism between the Central and provincial governments is a dualism subject to one uniform control—one where people may take different views of particular administrative measures, and may form a judgement slightly different, but where they are both responsible to Parliament, whereas the dualism of dyarchy in the strict sense is a division between two authorities,

one the British Parliament, the other an Indian legislature.

If then precedents must be found for the type of dyarchy which it is the object of this Essay to study, we must look for them in other directions, where the government is by two co-ordinate authorities, having their main-spring of power in two different sources. Dyarchy could perhaps be traced in substance and in a disguised form in the transition from irresponsible to responsible government in the British Colonies, when the Governor's Executive Council, appointed by him under his Letters Patent, was increased by ministers chosen from the legislature. The mixed council, though irremovable by a vote, was yet confronted with a representative legislature. A nearer analogy may be found in the old Egyptian system of Advisers. The Egyptian ministers were advised by British Civilians, termed the Financial Adviser, the Judicial Adviser, etc. These latter could only advise. No special provision existed to enforce the acceptance of their advice. "All that can be said", writes¹⁷ the Earl of Cromer, "is that in the event of their advice being systematically rejected, the British Government will be displeased and that they will probably find some adequate means for making their displeasure felt." The nearest analogy, however, which I can find for our system is the one prevalent in the Philippines

for some time.¹⁸ By the Jones Law of August 29, 1916, the Philippines were given a large measure of autonomy. There were the Philippine ministers who were in charge of six out of the seven departments of government, appointed by the Governor-General, with the consent of the Philippine Senate ; there was also one American minister, the Vice-Governor, as he was called, who was *ex-officio*, the minister for Education and Public Health, appointed by the President of the United States of America. The essence of the system is that some subjects were kept by the American authorities to themselves, and others were left to the administration of the Philippine ministers.

Analogies apart, in this Essay, the word 'dyarchy' is used in a limited sense to denote the form of provincial executive embodied in the Government of India Act, 1919 ;¹⁹ its essence is a division of the Executive into the Reserved Half and the Transferred Half, the one responsible, through the Secretary of State for India to the British Parliament and electorate for the administration of *certain* matters of government, the other, responsible, through the Legislative Council, to an Indian electorate, for the administration of certain other subjects.

II

ORIGIN AND DEVELOPMENT OF THE IDEA

The origin and evolution of the idea of dyarchy forms an interesting chapter in the history of political ideas. Various circumstances and different persons have contributed to its evolution. It was once the fashion for opponents of the scheme to point to Lionel Curtis as the author of the mischief : witness the statement²⁰ of Colonel Yate in the House of Commons, “(Mr. Montagu) came across a man named Curtis. It was from this gentleman that he obtained the idea of the dyarchy.” And so in the House of Lords,²¹ “But for the chance visit to India of a globe-trotting doctrinaire, with a positive mania for constitution-mongering, nobody in the world would ever have thought of so peculiar a notion as that of the ‘Dyarchy’.” Curtis himself has claimed²² much less as his own contribution to the evolution of the idea ; he says, “My own part in the matter was to build a continuous channel in which information drawn from a large number of sources could collect.” To understand this, and to have a correct perspective of the part he played in the evolution of dyarchy, we must begin by a brief account of the political condition of India on the eve of the war.

It was evident²³ as early as 1912-13 that the system of administration, resulting from the

Minto-Morley reforms, especially in relation to the constitution of the Legislative Councils in the Provinces would require amplification and development. Under that scheme, there was a nominated majority of members on all the principal Provincial Legislative Councils, except in Bengal, and there was a general feeling in favour of an attempt to enlarge the elective element and to secure a wider electorate. There was also a consensus of opinion that the solid official or nominated block of votes was partly responsible for the general spirit of opposition to Government measures on the part of the elected minorities.

But the capital defect of the Minto-Morley scheme—to which we must trace the germ of the idea of dyarchy—was that it brought in an unmitigated power of challenge and criticism, of influence without responsibility. It was based on the fundamental principle that the executive government should retain the final decision of all questions, should be an autocracy. It ceased, therefore, to satisfy the political aspirations of India. This explains why some schemes of reform, prepared before 1917, had soon to be given up. We have it on record²⁴ that schemes were informally and tentatively discussed which, while retaining full irresponsibility of the Executive, were designed with proper safeguards, to extend the powers of control or influence of the elected members on the

Councils ; meanwhile Lord Hardinge had left on record a Memorandum on the changes which were necessary in the constitution of the Administration ; all these were taken into consideration by Lord Chelmsford's Government in 1916. The resultant proposals were embodied in the Government of India's Despatch No. 17, dated 24th November 1916. They were subjected to the criticism that they failed to devolve any form of responsibility to the people of India or their representatives.

That attention was drawn to this aspect of Indian constitutional reform was partly due to the new sense of self-esteem which India had gained by her participation in the Great War. She had, to adapt the words of Sir Satyendra (later Lord) Sinha,²⁵ a feeling of profound pride that she had not fallen behind other portions of the British Empire, but had stood shoulder to shoulder with them in the hour of their sorest trial. It was natural that she should claim some boon as a reward for her services ; and further her part in the war engendered a general belief that she had proved herself worthy of further trust and of a more liberal form of government, in which some responsibility was devolved on Indians. Add to this the fact that the war had then come to be regarded more and more as a struggle for the right of all people to rule their destinies, and the insistence on the delegation of

some responsibility becomes understandable.

It was not to be expected that Parliament would abate its control in favour of an Indian bureaucracy. The delegation of any responsibility, it was recognized early, must be to some representative authority. This recognition was of some importance in the evolution we are now tracing, for to that recognition must be attributed the idea of successive stages, and all its implications : the representative authority to whom responsibility could be delegated was not yet in being ; it had to be created, developed and trained; and, in the meanwhile, it was argued that the responsibility of Parliament must be retained in the fundamental functions of government such as law and order. The announcement of the policy of H. M.'s Government on the 20th August, 1917 is indicative of this trend : "The policy of His Majesty's Government is the gradual development of self-governing institutions, with a view to the progressive realisation of responsible government in India as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible. . . . This policy can only be achieved by successive stages".

THE LONDON STUDY GROUP

While thus the official mind was being gradually prepared for the delegation of *some* responsi-

bility, the exact form in which this might take shape was being eagerly studied by a group of earnest students in the old bursary of Trinity College, Oxford. A study group had been formed in London in the autumn of 1915, primarily to study the relation of India to the rest of the Empire. It included men like Sir William Duke and Sir Lionel Abrahams, who had actual experience of Indian administration, and others like Lionel Curtis, who could claim no such experience, but were interested in learning the nature of the Indian problem. Facts and opinions were collected, not merely from documents but at first hand from those who could speak with authority on the subject. Very early in their studies, the group came to the conclusion that advance on the lines of the Minto-Morley Reforms was not likely to help India in the direction of responsible government. It would give the electorates power to paralyse government at every turn, but no power for constructive work, and no responsibility for conducting the government of the country. The suggestion was then made that provincial electorates, through legislatures and ministers of their own, could be made responsible for *certain* functions of government to begin with, leaving all others in the hands of executives responsible to the Government of India and the Secretary of State—the principle then termed ‘specific devolution’, but

later on termed dyarchy. Being novel, it was naturally looked upon with some suspicion and even held to be dangerous ; but it was argued in defence that if the principle were indeed novel, so was the situation to which it was applied, and that other alternatives were even less suitable.

THE DUKE MEMORANDUM

One step in advance was taken when Sir William Duke, sometime Lieutenant-Governor of Bengal and member of the group, was entrusted with the task of reducing the principle to a workable scheme. The result was an important document, entitled 'The Duke Memorandum'²⁶, being an experiment in the application of the principle of dyarchy to the Government of Bengal. The first draft was subjected to the criticism of the study group and was later recast by its author in the light of the discussion.

The importance of the Duke Memorandum in the evolution of the idea of dyarchy has to be estimated with some care. It did not, be it noted, supply the precise model on which the scheme, adopted later, was based. But the essential principles were there. Bengal was to have an Executive divided into two portions, transferred and reserved. "The suggestion is", Sir William wrote, "that for such of the departments of Government as were made over to it, the legislature should be

really supreme, and should administer by an executive chosen from its own members and responsible to it." The reserved departments were to be administered as before by members responsible ultimately to Parliament. There were, of course, differences. In particular, the scheme provided for a separate purse for the transferred departments. Its great merit, however, was that it provided a plan on which more thought could be bestowed and discussions could centre.

LETTER TO MR. BHUPENDRANATH BASU

Events moved rapidly. Sir William's draft and the discussions which followed it happened to reach the ears of Lord Chelmsford, who asked for a copy of the scheme, and was supplied with one about May 1916. Lionel Curtis reached India in October of the same year, primarily on a study tour. Certain circumstances²⁷, however, forced him to take some active part in the political discussions of the day. He reiterated his views on Indian constitutional advance in a letter²⁸ to the Hon. Babu Bhupendra Nath Basu, then Member, Indian Legislative Council and nationalist leader. This letter is the second landmark in the history of dyarchy, being a further application of the principle of dyarchy—this time, to the Government of the United Provinces. It also became the basis of much useful public criticism of the whole principle, for

the letter was printed in interleaved copies and circulated to a number of Indian and European officials and non-officials, who were requested to note their comments on the blank pages.²⁹ In this way a mass of valuable material was collected. It is interesting to reflect that nearly every defect disclosed by fifteen years of dyarchy had been anticipated by these (to us) anonymous authors of these comments.

THE JOINT ADDRESS

While these comments were being received, Mr. Montagu, the Secretary of State, arrived in India to take the preliminary steps for carrying into effect the declared policy of His Majesty's Government, embodied in the pronouncement of August, 1917. On his arrival at Delhi, an address³⁰ was presented to him, outlining a scheme of reforms and signed by sixty-four Europeans and ninety Indians. Its basic principle was the same principle of dyarchy as had already been outlined in 'the Duke Memorandum' and the Letter to Mr. Bhupendra Nath Basu. It differed, however, in suggesting smaller Provincial States—into which the existing provinces were to be divided on racial and linguistic considerations—as being more suitable units where the experiment of partial responsible government could be tried. This joint address must be considered the third landmark in the evolution we are tracing. It

gave wide publicity to the principle of dyarchy. Its peculiar significance lay in the fact that it embodied the acceptance by a large body of British Indian opinion of the principle which had been evolved in the discussions of an English study group—largely no doubt due to the influence of Mr. Lionel Curtis himself³¹ in shaping the address.

THE MONTAGU-CHELMSFORD REPORT

The formulation of the principle of dyarchy in an official document occurs for the first time in the Montagu-Chelmsford Report³². Its distinguished authors must undoubtedly have heard³³ of the discussions, both in England and India, on the principle of dyarchy, long before they received the Joint Address; they had also occasions³⁴ to discuss privately with Curtis the merits of the scheme. Mr. Montagu even assures³⁵ us that their scheme had an independent and spontaneous development before he had seen Curtis. But whatever the influences were that induced them to accept the principle, the fact is significant: they made it the most important part of a constitutional scheme, intended to put India on the path towards ordered responsible government.

It is necessary to state in some detail the plan of dyarchy recommended in the Report: it formed the basis of discussion for well-nigh a year and a half and was, with some modifications, incorpo-

rated in the Government of India Act, 1919. It was based on two postulates, that complete responsibility could not be given immediately without inviting a break-down, and that some responsibility was to be given to satisfy in some measure the demand for political responsibility. Reason and experience alike pointed to the conclusion that the provinces were the domain in which the earlier steps towards the progressive realization of responsible government should be taken. In each province, then, there was to be a Governor, or Lieutenant Governor as the head of the Government. In the administration of specified departments, which were transferred to popular control, he was to be generally guided by a minister or ministers chosen from the elected members of the legislature; in the administration of the others he was to be helped by councillors, ultimately responsible, through him, to Parliament. Ministers were to be appointed for the life-time of the Legislative Council, *i.e.*, they were to hold office not at the will of the legislature, but at that of their constituents. In the transferred departments, the decisions of the ministers were subject to the Governor's advice and control. The Governor was thus expected to refuse assent to the proposals of his ministers only 'when the consequences of acquiescence would clearly be serious' or if the proposals were clearly 'the result of inexperience'. The two parts of the Executive were

to cultivate the habit of joint deliberation, for it was essential that it should present a united front to the outside ; but associated deliberation was not to be allowed to blur the separate responsibility of each part. The budget was to be a joint one for both halves of the government, the allocation to be decided at a joint meeting and safeguards being provided to meet difficulties. Over the legislation and finance of the transferred departments, the legislature was normally to have full control ; but over the reserved departments, it would have the power to criticise and influence, but not final powers of control, for the Governor was to be given sufficient powers, legislative and financial, to discharge his responsibilities in those departments. Finally there was to be a system of periodic commissions to review the experiment, and to consider whether it would be possible to establish complete responsible government in any province ; they were also ' to advise on the continued reservation of any departments for the transfer of which to popular control it had been proved to their satisfaction that the time had not yet come ; and to recommend the re-transfer of other matters to the control of the Governor-in-Council if serious maladministration were established.'

This is but a bare summary of the plan as developed and justified at great length, in the report. The report well deserves the encomium bestowed

upon it by a speaker in the House of Commons : 'not only a very able and eloquent state paper, but it is also one of the greatest state papers which have been produced in Anglo-Indian history, and it is an open-minded candid state paper, a state paper which does not ignore or gloss over the points of criticism which have since been elaborated'³⁶. Its great merit is that it advanced the plan of dyarchy yet a stage further from being an academic idea to a practical constitutional scheme.

III

ALTERNATIVE SCHEMES

The subject of the chapters which follow is this scheme of dyarchy as modified and finally adopted in the Government of India Act, 1919. It will be useful, however, if at this stage we review briefly the alternative schemes embodying the principle which were put forward at the time. Such a review will serve at least to show that the political concept of dyarchy, as implying mere dualism, may be embodied in several forms ; the future student of Politics may, under altered conditions, be attracted to one of these variants, as possibly avoiding the defects which have been observed in the working of one of them. Historically, such a review will also place our experiment in its proper perspective ; it will bring out the fact that the

scheme of dyarchy was evolved by much anxious thought and inquiry brought to bear on a great problem by a large number of persons. The discussion of alternative schemes brought into clearer relief both the merits and defects of the scheme on the anvil ; and the scheme, as finally adopted, may therefore be taken to represent the greatest measure of common agreement among those qualified to speak at the time as to what was most practicable under the circumstances.

Pure dualism has, of course, never been seriously suggested as a workable scheme of government ; but it will help our understanding of the various schemes suggested if we picture to ourselves its implications. It will mean two different executives, each working in conjunction with a separate legislature of its own. Each authority will make its own laws, control its own finance, and will have its own separate staff for the administration of the subjects allotted to it. Such complete dualism in the executive and the legislature has one merit : it is clearly educative ; it invests each of the two authorities with clearly defined duties and responsibilities ; it affords the maximum opportunities for an untrained electorate, legislature and ministry to learn by trial and error. But financially it will impose an intolerable burden on the people ; the attempted separation of the orbits of the two authorities will deprive both of chances

of association and consultation which are likely to be helpful³⁷; and, above all, it must lead to hopeless friction.

THE PLAN OF PROVINCIAL STATES

In the art of government, then, we can mean by dyarchy only modified dualism, if we are to eliminate obvious difficulties. The alternative schemes of this type put forward in the years 1918-19 fall into two main categories. One of them is the plan of provincial states³⁸. Briefly it urged that popular responsibility should be developed not in the provincial legislative councils but in new constitutional bodies to be created for this purpose and invested with jurisdiction over smaller areas. Its essence is that just as in a federal state, there is a division of powers between the federal government and state governments, each independent of the other in its own sphere, so also within the same province, there should be a division of functions between the Provincial Government and (the newly created) sub-provinces or provincial states. In each of the smaller states, there was to be an elective legislature and a ministry responsible to it, in charge of *all* the functions transferred to the provincial state. In respect of these transferred subjects, as Lord Sinha was careful to put on record,³⁹ the Government of the provincial state was not to be in a

relationship of subordination to the Government of the province. In other words, the dualism contemplated in the scheme was not a division within the same executive government, but, one between a government having certain specified functions over a larger area and several governments having other specified functions over smaller areas. As the State Councils developed, more and more functions would be made over to them, as the result of periodical inquiry by a recurrent Commission, until finally the provincial governments disappeared and the states would enjoy complete responsible government.

The scheme has merits. In the early stages of training in responsible government, it is an advantage that the electorate forms a homogeneous whole, bound together by ties of race, custom and language. In a smaller area, the problems, too, are less complex, and such as to be within the capacity of the understanding of the average elector. It is, therefore, likely to encourage local interest in politics and enable men of local weight to come forward and make their influence felt. Further, though it does not avoid dualism it mitigates its effects by restricting its operation to a smaller area, and avoiding a possible divergence of aim between the members of the same dual government.

The plan was rejected by the authors of the Joint Report: it appeared to them that the dis-

advantages far outweighed its disadvantages ; the powers of the provincial states would be too much circumscribed and dualism was inevitable in any case. There was also a fundamental difference in outlook ; to the joint authors, the plan appeared to approximate to a scheme of pure dualism, the popular part and the official part being equipped with a complete and separate paraphernalia of their own and trusting to their orbits lying sufficiently apart for collisions to be avoided. In other words, it appeared to overlook the principle they laid down that while there must be a certain division in order to get a clear definition of the several responsibilities of the two parts of the Government, there must be some union to get association in aims and policy between them. Above all, they felt that a general redistribution of provinces on a linguistic basis, which, they thought, the scheme implied, was not politically expedient. We may well believe that the operative reason was the last, *viz.*, unwillingness to face the opposition to a linguistic redistribution of provincial areas.

It is out of place here to discuss in detail the wisdom of the rejection of the plan of provincial states. In the light of subsequent events, when the chief defect of dyarchy has been declared to be the blurring of responsibility, it is arguable that if the main aim of dyarchy is to develop a clear sense of

political responsibility in a *certain* sphere of government, *that* plan was better calculated to achieve the purpose by clearly defining the responsibilities of the popular element in the smaller provincial states. The answer to this is two-fold ; first, this is wisdom after the event ; and secondly, to introduce constitutional reforms of a great magnitude and couple it with a general scheme of redistribution was, perhaps, to ensure the failure of both.

OTHER SCHEMES

Various other schemes⁴⁰ were put forward at this time with greater or less authority. The first in point of time was the Congress-League scheme,⁴¹ published before the Montagu-Chelmsford Report. More than one alternative was suggested by the official reports⁴² of the various Local Governments on that Report ; another scheme was formulated⁴³ by the five Heads of provinces after the Local Governments had discussed the proposals officially ; yet another⁴⁴ was briefly outlined by Sir Ibrahim Rahimtoola, sometime member of Executive Council, Bombay ; and finally the Joint Select Committee had yet another alternative scheme⁴⁵ laid before them by representatives of the Indo-British Association. While these schemes differed in details, they were in essence the same ; they purported to provide a unified Executive, and proceed, as the Lieutenant Governor of the Punjab

put it,⁴⁶ on the basis of giving *some* responsibility to the legislature for *all* matters of government,⁴⁷ rather than *full* responsibility for *some*. They postulated an Executive Council, consisting in part of officials and in part chosen from the elected members of the legislature, and all holding office for a fixed period. There would be no division of functions into 'Reserved' and 'Transferred', the members of the Government preserving joint responsibility for all the decisions of the Government. If then it be asked wherein the element of responsibility to popular will consisted, the answer is that as the non-official members of the Government would be selected from persons representing a substantial body of opinion in the legislative council, they would, in practice, 'necessarily be influenced by the opinions of the Legislative Council.' Progress towards fuller and more real responsible government was to be achieved on the one hand by gradually increasing the number of members of the Executive taken from the elected members of the legislature and by gradually therefore handing over to such members a larger and larger range of portfolios, and, on the other hand, by a gradual increase in the deference paid by the Executive to the wishes of the legislature.

The crucial defect of the scheme may be summarized in the famous aphorism of Washington, 'Influence is not government,' for, here, the vital

question to consider is 'to whom was the Executive to be made responsible for their final decisions' ? The only honest answer can be : ultimately through the Secretary of State for India to the British Parliament ; for a unified Executive must as such be answerable for its actions to Parliament, and subject in the last resort in all matters of administration to Parliament's control. This necessarily implies that the will of the local legislature as representing the electorate could only *influence* and not *control* ; it would not be *binding* in any way on government. To the members of the popular half of the Executive, also, it was not likely to give anything more than a superficial training in real responsibility ; for any member of the Government, as Sir James Meston put it,⁴⁸ could always retreat behind the corporate responsibility of the composite government.

The scheme would thus fail to establish any real responsibility to legislative councils or electorates in India. There is yet another defect inherent in its principle of a divided allegiance, *viz.*, a possible paralysis of government which would lead rapidly and inevitably to complete control by legislatures in India and a complete ouster of the authority of Parliament.⁴⁹ The official members of the Government would be responsible to Parliament ; the non-official members of the Government would, as members of a united Government, be

similarly in theory responsible to Parliament. But they would be necessarily influenced by the opinions of the Legislative Council from whose ranks they were elected. If a difference of opinion arose between the official half and non-official half, what was to be the attitude of the latter? Assuming that their view coincided with that of the majority of the legislature, they might either sink their difference and support their official colleagues, or oppose their colleagues and withhold their support. If they chose the former alternative, the element of responsibility to the legislature would disappear; if they opposed their colleagues, the unity of the Government would recede. If, on the other hand, the official members of the Government adopted a course which they honestly believed to be inconsistent with the discharge of their responsibility to Parliament in deference to their non-official colleagues and the majority of the legislature, they would, no doubt, *pro tanto* be establishing a system of government by popular control and rendering the Executive amenable to the popular will, but it was unlikely that Parliament would for a moment tolerate such government by abdication.

And lastly let it be noted that under an apparent unity it masks dualism—and that of the worst type. Once the stage was reached by which any of the members of the Government felt their

obligation to the legislature to be stronger than their obligations to their official colleagues, then dualism would in fact have established itself ; from the very moment that we have within one cabinet two bodies of men chosen from wholly different motives, there, whether we like it or not, we have dualism. It is of the worst type because the two halves of the Executive would have no separate spheres of work and would be likely to have friction over the whole range of their work, from which there would be no escape and a deadlock might result.

A variant of dyarchy, which, in fact, was a triarchy was suggested, though not pursued further, by Lord Islington in his questions⁵⁰ before the Joint Select Committee. In addition to a two-fold division of subjects, into reserved and transferred, this would mean certain subjects, *e.g.*, education and industries, being placed under the united government in the provinces and make the whole policy attaching to those subjects one to be decided upon by the united government, the Executive Council, and Ministers sitting together as a Cabinet and deciding as such with the Governor. It is sufficient to say that this was likely to add to the complications of an over-complicated scheme and to blur responsibility altogether.

IV

HOPES AND FEARS

While the alternative schemes were subjected to the most searching criticism, it would be untrue to suggest that the Montagu-Chelmsford plan of dyarchy was accepted without demur. The records of the period suggest rather that the whole scheme was viewed with suspicion by officials and non-officials alike as a novelty in constitution-making ; many experienced administrators, such as Heads of provinces ,were in fact outspoken in their criticisms, and even in wholesale condemnation. These criticisms suggest the thought that though the Local Governments were in theory subject to the superintendence, direction and control of the Government of India, they, in fact, enjoyed a large measure of freedom to put forward their point of view and even to oppose a scheme warmly supported by the Central Government. It will, I think, be a correct statement that dyarchy was rather acquiesced in, than accepted; and even this, because of the realization that there was no decidedly better alternative.

The fears expressed were of diverse sorts, but most of them had a common source, *viz.*, that the scheme was a complete novelty, the working of which no one could foresee. It was largely theoretical, whereas administration is a practical business,

which cannot easily adjust itself to the niceties of a theoretically sound scheme. To set up a machinery which was wholly untried, and without precedent in history, in the place of an existing one, which, whatever its defects, was well tried and had solid achievements to its credit, was to court disaster. It was considered impossible to divide the functions of government so that some should be exercised by one body and others by another. Differences between councillors and ministers would develop, leading to never-ending friction. Divided government meant weak government, whereas the need of the hour was strong government. Again, the necessary social foundations for even a partial responsible government—a homogeneous people with a common purpose, and an educated electorate taking some interest in public affairs—were lacking. The problem of government, it was urged, could not be usefully considered except in close connexion with the social conditions of the people; and such things as the caste system, the marriage customs, the position of women, the variety and conflict of religions and sects could not be ignored. They constituted the facts of the situation. Constitutions cannot be invented, so runs the argument, *in vacuo*, without reference to the life and nature of the people for whom they are intended. It was no use to pick them up 'from a rock or tree.' Members of the

proposed electorate would not be able to recognise the difference in responsibility for reserved and transferred subjects ; and, in practice, all the blame for unpopular measures would be put on the Governor and the Councillors, and the ministers would take credit for the rest.

Nor is this all. The legislature in a dual government would constantly attempt to convert a legitimate influence in reserved subjects into a control, which the Government must as constantly resist. Uncertainty and delay in despatch of business would be the order of the day. Inefficiency in administration would be an inevitable result. The great public services would gradually deteriorate, partly due to ill-treatment and partly to political influences. Finally, the transfer to popular control of a definite portion of the functions of government, being an admission that such transfer was permissible and salutary, would be a direct inducement to further demands, long before experience had justified it ; the clamour for it would be so insistent that the government would be compelled to yield. It is the evil of a temporary constitution that attention would be concentrated rather on the preparation of the case for the grant of additional powers than on exploring the potentialities of the existing one.

In short the whole scheme of dyarchy appeared to many to constitute in effect rather a

revolution than a reform in the government of the country. It expected, in their view, too much, from the Governor, the Executive Council and ministers, the Legislative Council and the electorate—in fact, from all concerned—of ability, mutual good-will and forbearance. Briefly, the dual government appeared to them to be unsound in principle and unworkable in practice.

We examine later how far, in the light of experience, these fears were well-founded. In the meanwhile, we may note that there were not wanting in the country people, who, while deeply conscious of the difficulties of working the scheme, did not take so pessimistic a view of things and were prepared to give it a trial. Taking their stand on the terms of the Pronouncement of August 1917, which had laid down the 'progressive realization of responsible government' as the objective of British policy in India, they held that the plan of dyarchy was the best to achieve that end. They urged that by responsible government is meant a system of government under which electors, competent to judge between rival policies and free to give effect to their judgement, choose legislators who can call the Executive to order and can themselves be called to order by the electorate; and that other schemes failed when judged by this criterion. It was calculated to train people in the art of taking respon-

sibility for their decisions ; it would be educative in the sense that it would give men an opportunity to show what they were capable of doing. It proceeded on the basis of proved results. Though one does not like to bring the sacred text into a secular discussion, the scheme, it was urged,⁵¹ did embody the idea that "Thou hast been faithful over a few things. I will make thee ruler also over many things." Otherwise the Government had no means of judging whether the representatives of the people would rightly use the power entrusted to them ; there was the further advantage that the existing executives would provide a standard of efficiency in administration by which the Indian executives, legislatures and electorates could judge their own. And lastly it was hoped that the ministers would gladly avail themselves of the Governor's trained advice upon administrative questions, while, on his part, he would be willing to meet their wishes to the fullest possible extent in cases where he realized they had the support of public opinion. To the argument that the principle was novel, the obvious reply was that the situation to which it was applied was equally novel. A problem without precedent could only be solved by an expedient of a similar kind. No doubt there was likelihood of friction ; friction was in any case inevitable in the passage from total irresponsibility to complete responsibility ; what

at best they could do was to minimize the chances of friction. If, as they hoped, reasonable men would conduct themselves in a reasonable manner, they believed dyarchy was the only practicable scheme to bridge the gulf between autocracy and responsible government.

V

FINAL ADOPTION

It is sufficient, in this story of the introduction of dyarchy, to say, that the arguments of the 'hopefuls' were ultimately accepted by Parliament. A bill framed, in the main, on the Montagu-Chelmsford Report was prepared and submitted to Parliament in June 1919, and, in due course, referred to a Joint Select Committee of both Houses of Parliament. The work of that committee may well be estimated from the words of one of its members, "We desired to remove all possible causes of friction ; we desired to remove all shams ; we desired to fix responsibility everywhere ; and we desired to leave the Government with real weapons to fulfil its responsibilities."⁵² The result of their labours was to make important changes⁵³ in the scheme of dyarchy as contemplated by the authors of the Joint Report. Accepted by Parliament, the Bill became law on 23rd December 1919.

At the same time, a proclamation⁵⁴ was also issued by the King-Emperor, exhorting the 'new popular assemblies to interpret wisely the wishes of those whom they represent, and not to forget the interests of the masses who cannot yet be admitted to the franchise,' and the ministers of the future to 'face responsibility' and to maintain 'the essential standards of a just and generous government'.

The new constitution was, in theory, ready for inauguration ; it took some months, however, before the preliminary arrangements in connexion with it, the preparation of electoral rolls for instance, could be completed. Actually the first elections were held in November, 1920 ; and the first ministers assumed charge of their offices in December⁵⁵ or in the early days of January, 1921. The new legislatures were formally inaugurated, in some provinces by H.R.H. the Duke of Connaught, during January-February.

CHAPTER II

THE ESSENTIALS OF DYARCHY

I

THE BASIC PRINCIPLE

Dyarchy, we have said, is a system which aims at assigning the sole responsibility in a certain list of matters to ministers chosen from and accountable to the legislative council for their proper administration, while other subjects are administered by members of the Executive Council who are selected independently of the legislature, and are not responsible to that body. It is admittedly a half-way house between autocracy and responsible government ; its basis is the gradual training of the ministers, the legislature and the electorate by the exercise of responsibilities proportionate to their capacity for the time being. It proposes to achieve this by making a beginning in establishing the responsibility of ministers to the legislature with an elected majority, and giving the legislature a measure of control over the executive government, but restricting the matters within which this control may operate.

The institutional forms in which the system is embodied are best studied by a reference to the

statutory provisions relating thereto and elucidating the main principles underlying them.

II

THE TRANSFER OF SUBJECTS

A first essential, then, is the transfer of subjects to ministers chosen from the elected members of the legislature, who are entrusted with the administration of *some* departments of government and are held accountable to the legislature for such administration. The reason underlying this is obviously that those in power considered it premature to hand over charge of *all* subjects to a popular executive without inviting a complete breakdown of the machinery of government. One could not, it was argued, set out to test the potential vitality of a man long bed-ridden by sending him to march twenty miles the first day. The proper course would, obviously, be to develop his strength by a little exercise gradually increased as the patient's strength improved. If it be asked whether inefficiency could be tolerated in any matter of administration, the answer is, in the words¹ of the Earl of Selborne, "There is efficiency and there is efficiency". In matters of law and order, and the peace of the country it was felt, one could not be too efficient, but in all other spheres of activity, government must be free to make mistakes, if it was to

learn. So long as the blunders are not irreparable that is the only method by which any nation can be trained in the art of self-government. It also follows that the departments transferred must be those in which mistakes, though serious, would not be irremediable.

There is another idea implicit in the reservation of some subjects which should not be missed, and that is the idea of progress by stages with all its implications. In fact dyarchy could only be defended on the ground that the Government had otherwise no means of judging whether the representatives of the people would rightly use the powers entrusted to them. The necessity to sit in judgement made it essential that there should be transfer only of some subjects. Briefly, the idea of the transfer of subjects was in keeping with the terms of the Pronouncement of August, 1917.

SUBJECTS TRANSFERRED

The subjects handed over to the administration by ministers are termed in the Act 'transferred subjects' and the others 'reserved subjects'. The original division was largely based on the recommendations of an expert committee, the Committee on Division of Functions² as modified by the Government of India, *Fourth Despatch*³ and later discussions, particularly in the Joint Select Committee. We may also note here that the transfer of

subjects was effected not by the Act itself but by rules⁴ made under the Act. The provisions in the Act regarding transfer authorized⁵ the making of rules for the transfer from among the provincial subjects of subjects to the administration of the governor acting with ministers, and for regulating the extent and conditions of such transfer, provided that the rules were not to authorize the revocation or suspension of the transfer of any subject except with the sanction of the Secretary of State in Council.

The list of subjects⁶ transferred includes local self-government, medical administration, education other than European and Anglo-Indian education, agriculture, fisheries, co-operative societies, excise, development of industries and religious endowments⁷.

PRINCIPLES OF TRANSFER

Apart from the subjects themselves, the student of Politics is primarily interested in understanding the principles behind the transfer of *some* and the reservation of *other* subjects. In other words, what is the criterion by which one subject was considered fit for transfer, and another not ?

Bearing in mind the general principle that the measure of responsibility to be devolved was practically that of the burden which the popular part of the government could be considered capable of

bearing, the following principles were taken as the basis for transfer :—

(1) Those which afforded most opportunity for local knowledge and social service ;

(2) those in which Indians had shown themselves to be keenly interested ;

(3) those in which mistakes, though serious, would not be irremediable ;

(4) those which stood most in need of development ;

(5) those which concerned the interests of the classes who would be adequately represented in the legislature, and not those who might not be adequately represented.

On the other hand, from various indications in the evidence taken before the Joint Select Committee and the Report of the Committee on Division of Functions, it is possible to indicate the general principles which led to the reservation of other subjects. In general, a subject was not considered suitable for transfer if the principles governing its administration had not been codified, when the policy and system of administration governing it had not assumed final shape or been put on a statutory basis.⁸ Among others, this was one important consideration why land revenue was not considered fit for transfer. “The present system of dealing with land revenue”, said Mr. Feetham⁹, “is a system which is peculiarly un-

suited to conditions of Parliamentary control it would be very difficult to ask a Parliamentary body to deal with the question of land revenue as long as it depended, to the extent it does to-day, on executive order, that is as long as the reassessment of particular areas depended simply on an executive order and not on legislation before the land revenue could be regarded as a subject suitable for transfer, its administration must be put far more on a statutory basis than it is to-day". Again it was felt that subjects in regard to which British and Indian ideas differed most widely should not be transferred to popular control, for that would foment racial hatred. Where again, vested interests, and in particular, big industrial interests were likely to be prejudicially affected by transfer, it was better not to risk the experiment¹⁰; and lastly, a subject which was closely linked with Hill and Frontier Tracts or 'excluded areas,' e.g., forests in Assam¹¹, was best placed in the reserved list.

III

DUALISM IN THE EXECUTIVE

A necessary corollary of the transfer of some subjects is dualism in the Executive. This dualism is apparent in the appointment, salary, and tenure of the two parts of the Executive, the difference in their constitutional relation to the legislature, the

position of the Governor, and in the nature of the control exercised by the Governor-General and the Secretary of State.

The provincial executive consisted of two parts, *viz.*, the Governor in Council, and the Governor acting with his ministers. The members of the Executive Council were appointed by His Majesty by warrant under the Royal Sign Manual¹², and held office during his pleasure. The ministers, on the other hand, were appointed by the Governor. The Act laid down¹³ that these must not be members of his Executive Council or other officials, and that no minister was to hold office for a longer period than six months unless he was or became an elected member of the local legislature. They held office in theory, during the Governor's pleasure; virtually, as their salary was votable¹⁴, so long as they commanded the confidence of the legislature. The members of the Executive Council were paid such salary as was specified in the second schedule, appended to the Act and such salary was not votable¹⁵; ministers were to be paid the same salary as was payable to a member of the Executive Council unless a smaller salary was provided by vote of the Legislative Council¹⁶.

In their relations to the legislature the dualism is equally clearly marked. Thus where a governor's legislative council had refused leave to introduce, or had failed to pass in a form recommended

by the Governor any Bill relating to a reserved subject, the Governor could certify that the passage of the Bill was essential for the discharge of his responsibility for the subject, and thereupon the Bill was, notwithstanding that the Council had not consented thereto, to be deemed to have passed, and on signature by the Governor became an Act of the local legislature in the form recommended by him¹⁷. Similarly in demands for grants relating to a reserved subject, if the legislative council reduced the amount, wholly or partly, if the Governor certified that the expenditure provided for by the demand was essential to the discharge of his responsibility for the subject, the local government could act as if it had been assented to by the legislature¹⁸. On the contrary the Governor was *normally* expected to abide by the decision of the legislature, if the Bill or demand for grant related to a transferred subject. In respect of Bills and demands for grants relating to transferred subjects, he could override the legislature only in emergencies. Thus where *any* Bill had been introduced, or any amendment to a Bill was moved, or proposed to be moved, the Governor had power to certify that the Bill or any clause of it or the amendment affected the safety or tranquillity of his province and direct that no proceedings should be taken by the Council in relation to the Bill, clause or amendment¹⁹. Similarly the Governor had

power in cases of emergency to authorize such expenditure as was in his opinion necessary for the safety or tranquillity of the province or for the carrying on of *any* department.²⁰

The Governor as the head of the Executive was, in fact, a dual person. In relation to reserved subjects, he was constitutionally responsible to the Governor-General in Council and the Secretary of State. According to the Instrument of Instructions²¹, issued to the Governor, "Inasmuch as certain matters have been reserved for the administration according to law of the Governor in Council, in respect of which the authority of our Governor-General in Council shall remain unimpaired, while certain other matters have been transferred to the administration of the Governor acting with a Minister, it will be for you so to regulate the business of the Government of the presidency that, so far as may be possible, the responsibility of each for these respective classes of matters may be kept clear and distinct." The Governor normally presided at meetings of his Executive Council, and if a difference of opinion arose, the decision of the majority prevailed, the presiding officer having in case of equal division, a casting vote²². There was a provision²³, however, that whenever any measure was proposed before a Governor in Council whereby the safety, tranquillity, or interests of his province, or of any part thereof, were or might be, in the

judgement of the Governor, essentially affected, and he was of opinion either that the measure proposed ought to be adopted and carried into execution; or that it ought to be suspended or rejected, and the majority present at a meeting of the council dissented from that opinion, the Governor had power, on his own authority and responsibility, by order in writing, to adopt, suspend or reject the measure, in whole or in part. In relation to the transferred subjects, the Act merely laid down²⁴ that the Governor was to be guided by the advice of his ministers, unless he saw sufficient cause to dissent from their opinion. In considering a minister's advice and deciding whether or not there was sufficient cause in any case to dissent from his opinion, he was asked²⁵ by the Instrument of Instructions 'to have due regard to his relations with the legislative council and to the wishes of the people of the presidency as expressed by their representatives therein.'

Finally there is a difference in the nature of the control exercised over reserved and transferred subjects by the Secretary of State and the Governor-General in Council. The Act provided²⁶ that the Secretary of State in Council might by rule regulate and restrict the exercise of the powers of superintendence, direction and control vested in the Secretary of State and the Secretary of State in Council in order to give effect to the purposes of

the Government of India Act, 1919 ; and that, the powers of superintendence, direction and control over local governments vested in the Governor-General in Council were, in relation to transferred subjects, to be exercised only for such purposes as might be specified in rules made under the Act²⁷, though it must be added, the Governor-General in Council was the sole judge as to whether the purpose of the exercise of such powers in any particular case came within the purposes so specified. In accordance with the rules made under these sections, it was laid down²⁸ that the powers of superintendence, direction and control vested in the Secretary of State and the Secretary of State in Council under the Act, were, in relation to transferred subjects, to be exercised for certain purposes only *viz.*,—to safeguard central subjects ; to decide questions arising between two provinces which had failed to agree ; to safeguard Imperial interests ; to determine the position of the Government of India in respect of questions arising between India and other parts of the Empire ; and to safeguard the exercise of powers and duties imposed upon the Secretary of State or the Secretary of State in Council regarding the High Commissioner, borrowing and the services. A corresponding rule,²⁹ made under section 45-A of the Act, prescribed that the powers of superintendence, direction and control over the local government of a Governor's province

vested in the Governor-General in Council were, in relation to transferred subjects, to be exercised only for the following purposes, namely :—

(1) to safeguard the administration of central subjects ;

(2) to decide questions arising between two provinces, in cases where the provinces concerned failed to arrive at an agreement ; and

(3) to safeguard the due exercise and performance of any powers and duties possessed by, or imposed on the Governor-General in Council under, or in connexion with, or for the purposes of certain provisions of the Act,³⁰ or of any rules made by or with the sanction of the Secretary of State in Council.

It is significant that rules were not made to relax the control of the Secretary of State, or of the Governor-General over reserved departments. The relaxation of such control was left to be worked out by convention.

There are a few other provisions in the Act which also bring out the dualism in the Executive. These are, however, consequential : thus one³¹ provision prescribed that all orders and other proceedings of the Government of a governor's province were to be expressed to be made by the Government of the province, and to be authenticated as the governor might by rule direct, so, however, that provision was made by rule for distinguishing

rules and other proceedings relating to transferred subjects from other orders and proceedings ; this was clearly intended to enable the electorate to distinguish the orders made by the popular half of the Executive from those made by the official half; these provisions need not detain us here. The general tenor of these provisions, which established a dualism in the executive, is clear, *viz.*, to provide for the elements of responsible government in one part of the government, and at the same time to see that the responsibility of the other part to the Secretary of State was clearly maintained. As authoritatively stated by the Joint Select Committee of 1919, the object was to give ministers who enjoyed the confidence of a majority in their legislative council the fullest opportunity of managing that field of government which was entrusted to their care. "In their work", they wrote³², "they will be assisted and guided by the Governor, who will accept their advice and promote their policy whenever possible. If he finds himself compelled to act against their advice, it will only be in circumstances roughly analogous to those in which he has to override his Executive Council³³ On the other hand, in and for that field of government in which Parliament continues to hold him responsible, the Provincial Governor in Council will remain equipped with the sure and certain power of fulfilling that responsibility."

IV

MUTUAL CO-OPERATION

If dualism is necessary for training the ministers and the legislature in responsibility, mutual co-operation is essential for the smooth and harmonious working of the constitution. By its very nature this can hardly be prescribed by a statute of Parliament ; it must be largely left to convention and practice. Yet rules may be laid down to prevent avoidable difficulties, and to settle them when they occur so that they may not leave scars behind. The Act was content to lay³⁴ on the Governor the duty of making rules and orders for regulating the relations between his Executive Council and his ministers for the purpose of the transaction of the business of the local government. There are also some regulations,³⁵ included as part of the devolution rules, and a direction³⁶ in the Instrument of Instructions, which were calculated to secure harmony between the two parts of the Executive.

The general purport of these rules and directions is to trust the Governor to achieve the maximum co-operation possible. Thus when a matter appeared to the Governor to affect substantially the administration both of a reserved and of a transferred subject, and there was disagreement between the member of the Executive Council and the

minister concerned as to the action to be taken, it was the duty of the Governor, after due consideration of the advice tendered to him, to direct in which department the decision as to such action was to be given : provided that, in so far as circumstances admitted, important matters on which there was such a difference of opinion were, before the giving of such direction, to be considered by the Governor with his Executive Council and his ministers together.³⁷ In matters of finance, similarly, opportunities were to be allowed to the two parts of the Executive to agree among themselves regarding the allocation of funds³⁸ from out of a common purse ; but if agreement could not be reached, the Governor was to make the allocation, either at his discretion³⁹ or in accordance with the report of an independent authority, appointed by the Governor-General on the application of the Governor.⁴⁰ Above all, the Governor was directed⁴¹ to encourage the habit of joint deliberation between himself, his Councillors and his ministers.

The theory underlying joint deliberation needs further elaboration. The necessity for joint deliberation was of course the difficulty of drawing a clear line between the spheres of the two authorities. Subjects of government overlap, one over the other ; a perfect demarcation is impossible. Hence joint deliberation would provide an opportunity to adjust mutual

differences on the common orbit and achieve harmonious working in administration. But there is yet another reason, from the point of view of the further development of the constitution. If there were no joint deliberation, the result would be that the ministers concerning themselves with transferred subjects would never have anything to say on reserved subjects. But if reserved subjects were to become transferred subjects one day, it is essential that, during the transitional period, although there is no direct responsibility for them, there should be opportunities of influence and consultation. Therefore, as Mr. Montagu put it,⁴² "although it seems necessary to separate the responsibility, there ought to be every room that you can possibly have for consultation and joint deliberation on the same policy." The need for joint deliberation is of course clear, but it may at once be the cause of failure as well as success of dyarchy.

V

PROGRESS BY STAGES

The fourth, and the last, essential, implicit in the system of dyarchy, is the idea of progress by stages. This is recognized in an important section⁴³ in the Act, : "within ten years after the passing of the Government of India Act, 1919, the Secretary of State with the concurrence of both

Houses of Parliament shall submit for the approval of His Majesty the names of persons to act as a commission the commission shall report as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify, or restrict the degree of responsible government then existing therein.”

As we have pointed out, dyarchy proceeds on the basis of proved results ; the reservation, at the outset, of some subjects to official control makes it inevitable that there should be more than one stage in the evolution towards responsible government. From this point of view, dyarchy must be distinguished from the mere introduction of a partial responsible government. The latter need not necessarily imply provision for further progress on the road to fuller responsible government, but such provision is implicit in the theory of dyarchy. Those on whom power was devolved were asked to qualify themselves for the assumption of further powers ; the theory is, the more quickly did they justify the first devolution by the wise use of their power, the earlier could they realise the substance of full responsible government. The authority to judge whether they had qualified themselves for the assumption of further powers was Parliament : the Preamble to the Act included a specific provision that the time and manner of each advance could be determined only by Par-

liament. This provision was, in fact, inserted on the recommendation⁴⁴ of the Joint Select Committee: "Parliament should make it quite plain that the responsibility for the successive stages of self-government in India rests on itself and on itself alone."

VI

CHECKS AND BALANCES

One main feature emerges from this brief survey of the essential features of the system of dyarchy as embodied in the Government of India Act, 1919, *viz.*, it is essentially a system of checks and balances. It is necessary to grasp this fact firmly, if we are properly to understand its working in practice. Any system of government in modern days, it may be argued, contains checks and balances; and if there are more of them in dyarchy, the difference is only one of degree. But there are differences of degree which are in reality differences in kind. And, I think, dyarchy is an apt illustration. A divided and transitional government of this type is altogether without a parallel elsewhere; by its very nature, it imposes on itself a set of checks and balances with the double object of training the people in responsibility and of providing a reasonable security to all parties involved, and efficiency in administration. The Reserved Half was checked, on the one hand, by the Governor-General in Council and

the Secretary of State, and, on the other, by its natural desire to secure the co-operation of the ministers and the legislature, with whom it had various points of contact. The ministers were no less subject to limitations ; they were responsible to the legislature ; they had to look for support to the Governor ; they had to get the co-operation of the Reserved Half, and of the Finance Department in particular ; and they had to please their constituents and the wider public. The Governor, no doubt, was a unifying agency, and had great powers ; but he too was checked in a number of ways ; in reserved subjects, unless he could secure the support of a majority of his councillors, normally, he could do little ; and besides, he was answerable to the Governor-General in Council and the Secretary of State for their administration ; in transferred subjects, the intention of the Act was that, normally, he must be guided by the advice of his ministers ; and a united ministry, strongly backed up by a willing legislature, could compel the Governor to accept its advice. The efficacy of a constitution does not, of course, consist in the intentions of its framers, but in the way in which it is worked. In the following pages an attempt is made to sketch the working of the dyarchic constitution ; we may then be able to judge how far the hopes of its framers have been realized and how far the fears of its critics, justified.

CHAPTER III

SOME CONSIDERATIONS

I

SOCIAL FOUNDATIONS

It is an accepted maxim in politics that the true value of a political contrivance lies not in its integrity or theoretical consistency but in its adaptation to the temper and circumstance of the people for whom it is designed. Some account, therefore, of the social conditions under which dyarchy has been tried seems called for, if we are to have a true perspective of the subject. There is another consideration. The element of responsibility, which the system introduced, was taken from the British constitution; but while constitutions are easily copied, temperaments are not; and if it should happen that the borrowed constitution and the native temperament fail to correspond, the misfit may have serious results. What, precisely, are those social foundations on which the successful working of responsible government of the British model depends? Let a Britisher, Lord Balfour, say:¹ "It matters little what other gifts a people may possess, if they are wanting in those which, from this point of view, are most important.

If, for example, they have no capacity for grading their loyalties as well as for being moved by them ; if they have no natural inclination to liberty and no natural respect for law ; if they lack good humour and tolerate foul play ; if they know not how to compromise and when ; if they have not that distrust of extreme conclusions which is sometimes misdescribed as want of logic ; if corruption does not repel them ; and if their divisions tend to be too profound, the successful working of British institutions may be difficult or impossible."

It will be admitted that the objective appraisal of how far these conditions are present in any people is a difficult undertaking, for they are to be looked for in the *mores* of a people and are impalpable ; the student of Indian politics must be content with laying bare those social, economic and political factors which have had a recognizable effect on the working of a dual, and partially responsible, form of government.

II

COMMUNALISM

One social factor, which the student is usually asked to take into account, is the existence of cleavages within the body-politic, which generally goes by the name of communalism. It is possible at once to exaggerate or belittle the importance of this

feature in national life ; but its existence few will deny . The key to the understanding of this problem lies in the distribution of the different communities, of which the population is composed, in the various provinces. The census of 1931 shows that in certain provinces one community has a clear majority ; in others, another. Thus south of the Vindhyas, where the invasions of the Mahomedans came later, they, everywhere, form a small minority. In the Central Provinces they form less than 5 per cent; in Madras 7 per cent., and in Bombay without Sind 9 per cent. In these provinces there is also a small Christian minority but otherwise the Hindus form the vast majority. In Northern India things are different. The population of Bengal is made up of Muslims, 55.5 per cent., Hindus 43 per cent., and others 1.5 per cent. In Assam the Muslim element in the population is 33 per cent., in Bihar and Orissa 11 per cent., and in the United Provinces nearly 15 per cent. In the Punjab, however, the Muslims are in a majority, with 56 per cent., the Hindus and Sikhs coming next with 27 per cent., and 13 per cent., respectively. In the Frontier province and Baluchistan, the Hindu minority is numerically unimportant.

The significance of this analysis in our study is this : dyarchy implies the transfer of responsibility in a part of government to a popular executive ; the strength and effectiveness in the working

of this popular executive has been influenced by these social divisions. For it may be remembered that responsible parliamentary government is essentially the interaction of several factors, among the most important being the principle of majority rule and the willingness of the minority for the time being to accept the decisions of the majority. The basis, in fact, of the whole system is that the citizens have a perception of, and loyalty to, the common interests which enables the decision of the majority to be peaceably accepted. The formation of political parties, based on differences in political programmes, becomes possible, and the training of the popular half of the executive in responsibility, which it is the object of dyarchy to secure, may be easier and quicker when it rests for support on an effective sense of common citizenship. As it was, the transfer of political power from a bureaucracy, it may be argued, engendered a fear that the minority community might not receive fair treatment at the hands of the majority, which did not share its religion, its culture, and, therefore possibly, its general attitude towards social problems. This was, in its turn, except in the first few years of Hindu-Muslim *entente* (1921-22) a considerable factor in the working of the constitution, affecting the popular half of the Executive, in its relations with the Reserved Half as well as the Legislative Council.

We must, however, be on our guard against exaggerating the effect of communalism on dyarchy; for the history of its working in those provinces, where its influence is less or almost absent, shows that there has been no appreciable difference in the results. Burma in particular, we are told², is free from those acute religious dissensions which militate against the co-operation of men of different creeds. Toleration of the scruples and prejudices of others is a ruling tenet in her religion. There is an entire absence of caste, and no marked cleavages of social distinction or occupation exist. Yet Burma has not altogether escaped the difficulties in the working of dyarchy experienced in the Indian provinces. This only supplies a necessary warning in the study of political institutions against the tendency to exaggerate the influence of particular factors; what is important is the impact of the totality of forces on men and institutions.

III

FINANCIAL STRINGENCY

A general complaint noticeable in the memoranda³ drawn up by provincial governments for submission to the Reforms Enquiry Committee, 1924, and the Indian Statutory Commission, 1927-30, is financial stringency. While there is some truth in these complaints, financial stringency, I

think, must be taken in its relative sense, *viz.*, insufficiency of the net revenue in relation to expenditure considered necessary, and not a fall in revenue when compared with previous years. For an examination of the figures⁴ shows that taking 1921-22 as the standard year there was an increase in provincial revenue from 80.26 to 91.49 crores of rupees in 1928-29, an increase of 11.23 crores or 14 per cent. If we take into account the net revenue, *i.e.*, after deducting the contribution which the provinces had to make to the central government under the Devolution Rules, the increase is greater still, from 70.43 crores to 91.49 or 28.48 per cent. It is true this increase was shared by the different provinces in varying proportions. Thus Punjab had 57 per cent., Madras 53 and Assam 50, while the United Provinces had only 14 per cent., Bombay 16, Central Provinces 16, Burma 21, Bihar and Orissa 30 and Bengal 32.

The complaint of general financial stringency in these years, then, was based upon other considerations. Partly it was due to the fact that whatever the increase in revenue, it was insufficient to meet the increased expenditure found necessary for various reasons. During the War, and for a short time after its close, all schemes involving new expenditure had been held up with the result that there was, during the first few years after the termination of the War, much reconstruc-

tion work to be done. The rise in prices which followed the closing of the War made it necessary to grant substantial increases of pay to all government servants ; there was also the additional expenditure resulting directly or indirectly, from the Reforms. To make matters worse, the same rise in prices raised the cost of all material and so increased expenditure. To these we must add the sense of injustice felt by several provinces against the scheme of provincial contributions, commonly known as the Meston Settlement, though the grounds⁵ on which the injustice was felt were different. It will be useful to indicate the views⁶ of some provincial governments. The Madras Government referred to the deep sense of injustice felt with this settlement as contributing to the dissatisfaction felt at the working of the reforms scheme ; and they said that unless the financial embarrassments consequent thereon could be mitigated or removed, no changes whether in the direction of extending the sphere of ministerial control or otherwise would result in material improvement. The Bombay Government said that they had never ceased to protest against this settlement ; complaints were being perpetually made that the departments controlled by ministers were being starved ; and until the financial arrangements existing between the Governments of India and of Bombay were re-adjusted, no hopes could be held out of the satis-

factory working of the Act of 1919. The Bengal Government wrote that in Bengal the Meston Settlement was one of the main defects in the constitution ; it stood condemned from the outset ; and to this more than to any other cause, perhaps, might be attributed much of the discontent against the reforms, which prevailed in the early years even among the more moderate elements. The fact is that there was a sense of disappointment. It had been hoped that the ministers under the Reforms would be able with the help of a large anticipated surplus (according to the calculations on which the Meston scheme was based) to develop the nation-building departments entrusted to them, without the imposition of additional taxation. Indeed, says⁷ the Indian Statutory Commission, so great was the political importance attached to the obligation to leave each province with a reasonable margin for such development that the Meston Committee actually regarded it as a limiting consideration by which it was bound, and one of the grounds put forward in the Meston Report⁸ to justify its scheme of contributions was that it was thus possible to comply with the requirements of leaving each province with a surplus, and of inaugurating the new Councils without the necessity of resort to fresh taxation. But the hope was not realized.

The effect of all these factors was that ministers, generally, were unable to enter upon a policy

of progressive development in the spheres of administration committed to their care. They were unable to provide an answer to those critics who alleged that the reforms were a sham and that dyarchy was a blunder. The allegation might or might not be reasonable ; but it was necessary to show by tangible results that it was unreasonable, and to evoke confidence, if the popular half of the Executive was to be encouraged to explore the full potentialities of the constitution. The foundation of government is faith, not reason.

LATER YEARS

The later years did not show much improvement. No doubt the contributions under the Mes-ton Settlement were finally extinguished in 1927-28 ; this gave the contributing provinces increases of revenues and enabled them to devote substantial sums to education, public health and other objects of social amelioration. But it increased the disparity that had already been created between province and province ; besides, the central defect of the financial settlement remained, *viz.*, while the needs of the provinces were almost unlimited, their revenues were inelastic. The situation was made worse after 1931-32, when the depression reduced the revenues⁹ of almost every province ; many of them were compelled to curtail expenditure by

well-planned schemes of retrenchment, both in the reserved and transferred departments.

IV

THE POLITICAL FACTOR

The outstanding feature of the political history of the period has been a more or less continuous estrangement in sympathy between the rulers and the politically-minded classes. At the time when the Reforms were introduced, as the official chronicle puts it,¹⁰ the relations between the government and the people assumed an unprecedented acerbity. This was largely the result of the tragedies accompanying the suppression of the Punjab outbreak in 1919 and the deplorable massacre at the Jallianwala Bagh in Amritsar on April 13 of that year. It is now beyond controversy that under the martial law regime during those months things were done which deeply wounded the self-respect and pride of Indians. The situation was only made worse by the attempt of the House of Lords to justify the martial law doings. As H.R.H. the Duke of Connaught put it¹¹, the shadow of Amritsar had lengthened over the fair face of India.

To this feeling was soon added the great excitement in the Mahomedan community that the Christian powers were combining to depress the

forces of Islam. An agitation, known as the Khilafat movement, was set on foot with the object of bringing pressure to bear on the Imperial Government to restore the Sultan of Turkey to something like his pre-war position. From the combination of these two circumstances, coupled with general economic suffering, was born the movement of non-co-operation. With the history of this movement¹² we are not here concerned. Suffice it to say that an atmosphere was created most unfavourable for a great and novel constitutional experiment. In general people lost faith in the good intentions of the government; and there was a spirit of sullen resentment even among those who were not prepared actively to join forces with the non-co-operators—those whose enthusiastic co-operation could normally be expected and could alone contribute to the successful working of the scheme.

In due course the movement was brought under control, with the arrest of Mahatma Gandhi on March 10, 1922. But the general political situation in the country was still not favourable for a fair trial of the constitution. In February, 1923, the Swarajya party was formed at Allahabad under the leadership of Mr. C. R. Das. Their primary object was to contest the elections, enter the councils and try to wreck the constitution from within. It is

true that only in two provinces, *viz.*, the Central Provinces and Bengal they had any appreciable success. Here their activities led to frequent deadlocks, the Governor taking over the administration of the transferred subjects, more than once, under the special provisions of the Government of India Act for such an emergency. But in other provinces too, for example, Madras, their presence in larger or smaller numbers was a factor to be reckoned with, and, as is indicated later, profoundly influenced the working of the dyarchic executive and its relation to the legislature.

Towards the end of 1927 the Indian Statutory Commission was appointed and there was resentment at the appointment of an 'All British Commission'. A movement for boycott was organized. Events moved rapidly. The Commission reported in 1930 and then followed the first Round Table Conference. Extreme nationalist opinion had decided to boycott the conference, because it was not intended to function as a constituent assembly to draw up a Dominion constitution for India. Mr. Gandhi started another civil disobedience movement in connexion with the salt laws, and "the Congress organization was directed to the task of 'bringing the Government to its knees' by boycott and passive resistance."¹³ This was brought to an end by a 'pact' between the Viceroy and Mr. Gandhi in March, 1931¹⁴. There was a resumption of

civil disobedience in the early days of 1932 ; but this was followed by the arrest of Mr. Gandhi on 4th January, 1932 and his internment. From that time there has been a lull ; but the attention of politically-minded India has been directed more to the possibilities of the future constitution than of the existing one.

The significance of these events in the working of dyarchy is this : they give point to the fear expressed by the Madras Government in their letter¹⁵ to the Government of India in October, 1918, opposing the introduction of dyarchy. They said that if the division of functions between popular control and official control were introduced in a country in which the people and the Government were of common race, religion and language, it might have some prospect of success. But to apply it to India, where the Government differs in each of these respects from the population governed was to undertake the experiment in circumstances involving the maximum amount of difficulty. The political events which we have briefly referred to only accentuated the difficulty arising from this cause, and rendered the co-operation, between the official and the popular halves, so necessary for the successful working of dyarchy, rare or intermittent.

V

A BIRD'S-EYE VIEW

Dyarchy, however, has been worked, though not without occasional breakdown, for about fifteen years. It was introduced at the beginning of 1921 in the eight governor's provinces,¹⁶ viz., Madras, Bengal, Bombay, the United Provinces, the Punjab, Bihar and Orissa, Central Provinces and Assam. The 'minor charges,' viz., the North-West Frontier Province, British Baluchistan, Coorg, Ajmer, the Andamans and Delhi were left out of the scope of the experiment. The Act of 1919 did not also include within its scope the important province of Burma, but, subsequently¹⁷ by an executive order for which the Act gave statutory authority¹⁸, Burma was placed in substantially the same position as a governor's province.

Our study is thus based on the working of dyarchy in these nine provinces. In seven out of the nine, dyarchy has been continuously worked, though with varying success. In two provinces, however, viz., the Central Provinces and Bengal certain circumstances, in particular the activities of the Swarajist party pledged to a policy of wrecking the constitution from within, led to a temporary and intermittent breakdown of dyarchy during the years 1924-30. The working of the constitution in these two provinces is particularly useful to the

student as it helps him to understand what one may call the pathology of dyarchy.

It is also relevant to note the variety of conditions under which the experiment has been tried, as it gives better meaning to the results obtained. The area and population of the territorial units in which dyarchy has been worked differ considerably, Burma with its 261,610 square miles being the largest in area, Bengal with its 50.1 millions¹⁹ having the largest population, and Assam being the smallest in area as well as population with its 55,014 square miles and 8.6 millions of people. The social conditions under which the people live in the provinces are also not always uniform: the percentage of literacy,²⁰ the proportion of urban population,²¹ the strength of sectarian and communal feelings²², and the freedom enjoyed by women²³ in social life vary as between province and province. Again ministers in several provinces had to be drawn from more than one group and could not count upon the assured support of a majority of the legislature, while at least in one province, though only for a time, they were drawn from a single party and supported by a clear majority of elected members. Again in some provinces notably in Madras and Bengal, the dyarchic system tended often to approximate to a practically unitary system of government, the Governors, minis-

ters and the executive councillors meeting in joint cabinet for the discussion of all matters of administration, while elsewhere, joint meetings of the two halves have been rarer. The system has been tried in provinces where one party, with or without a majority, was clearly pledged to obstruction, as well as in others where responsible co-operators formed the largest number.

There is another point which is worthy of remark. While the dyarchic constitution was being worked, it was subjected to two enquiries, of perhaps a unique kind. The first was the Reforms Enquiry Committee, appointed in 1924 in response to the repeated demands²⁴ of the Indian Legislative Assembly for the revision of the constitution, which was to include the establishment of full responsible government in the provinces; and the other was the Indian Statutory Commission, 1927-30. The evidence given before the former committee, in particular by ex-ministers and members of executive council, forms, as it were the 'original source' for the student who is trying to understand the tendencies at work. To those concerned in the working of dyarchy—members of the legislature, ministers, executive councillors, leaders of public opinion and others—it was an eye-opener to the merits and defects of the system, and enabled them, if they were so minded, to profit by this knowledge for the rest of the period during which it lasted.

Indeed some of the recommendations of the majority of the Reforms Enquiry Committee were directed to the removal of certain defects inherent in the system, though they related rather to details than to its structure. Some of these²⁵ were accepted by the Government and given effect to by the amendment of the Rules or otherwise. Thus, for instance, to enforce the responsibility of ministers to the legislature, provisions were made in the legislative council rules for motions of no-confidence and questioning a minister's policy in a particular matter.

In all, it is finally useful to note, four general elections have been held—in 1920, 1923, 1926, and 1929-30; we have, thus, the record of work of thirty-five legislatures (Burma having had only three elections) and their relations to a dyarchic executive. During the period also 93 persons²⁶ have assumed the office of minister and 121 that of Executive Councillor; and co-ordinating the work of all these, there have been 47 heads of provinces, who have had the opportunity of trying the system. The point of importance in this statistical analysis is that the success of dyarchy depends much upon the good-will and the hearty co-operation of the Governor, the members of the Executive Council in charge of the reserved side, of the permanent officials and of the ministers, in other words, upon the uncertainties of the personal ele-

ment, which may vary in different provinces, and in the same province, from time to time. The more varied our data, the larger the number of men from whose experiences we seek to draw generalizations, the greater our chances of arriving at acceptable conclusions.

PART II
THE WORKING OF DYARCHY

CHAPTER IV

THE RESERVED HALF

I

THE GOVERNOR

The position of the Governor in the dyarchic system was unique ; he combined in himself the powers of a real and a nominal executive. He had four kinds of duties to perform. He was, along with his Executive Council, in charge of the reserved subjects, and, in that capacity, was responsible to the Governor-General in Council and the Secretary of State for their proper administration ; he acted with the ministers in respect of the transferred subjects ; he was the unifying agency in the Executive and decided points of conflict between the two halves of his government ; and lastly he took charge of the transferred subjects when the machinery provided for their administration broke down for some reason or other, for instance, the refusal of elected members of the council to accept office. He occupied, in fact, a most responsible position, at once of difficulty and of opportunity ; he was the controlling and guiding hand on which the smooth working of the whole machinery of dyarchy depended. Dyarchy, more than any other

form of government, depends for its smooth working on the personal element ; and in India its working depended for its success largely on the abilities which the Governor brought to bear on his task.

II

THE RESERVED SIDE OF GOVERNMENT

The reserved subjects were administered by the Governor-in-Council. The members of the Executive Council, normally four in number in the three Presidencies and three in the six provinces, were appointed by His Majesty ; their tenure of office depended on his pleasure ; they were paid such salaries as were fixed in a schedule to the Act, and were not alterable by the Legislative Council.

The Governor presided at meetings of his Executive Council, and if a difference of opinion arose, the decision of the majority prevailed. He had a casting vote in case of equality of votes ; he had the power to overrule the decision of his Council in cases, where, in his judgement, the safety, tranquillity or interests of his province were concerned. The Act provided, however, that in such cases, the Governor and the members of the Council present at the meeting were mutually to exchange written communications, stating the grounds of their respective opinions, and the order of the Gov-

error was to be signed by the Governor and by those members.

The Governor had also power to appoint a member of his Executive Council to be vice-president thereof; he made rules and orders for the more convenient transaction of business in his Executive Council. Over officers of the public services employed in departments dealing with reserved subjects, authority was no doubt vested in the Governor-in-Council; but the personal concurrence of the Governor was necessary¹ to an order affecting emoluments or pensions, an order of formal censure, and an order on a memorial to the disadvantage of an all-India or provincial service, as well as an order for the posting of an officer of an all-India service.

Normally the Governor did not hold any portfolios himself, but in the smaller provinces,² he was, for some years, in charge of specific departments, such as Public Works and Excluded Areas.

In an analysis of dyarchy, the relation of the Governor to his Executive Council in practice calls for few remarks, as no special problems arose. We have it on record³ that it was generally cordial; differences of opinion, no doubt, there were, but these were settled amicably, and gave rise to few constitutional difficulties of any importance.

III

ATTITUDE OF THE LEGISLATURE

The reserved side of government in the dyarchic system is in the difficult position of an irremovable executive which has to work through a legislature in which it does not command a majority. The Legislative Council has power to reject bills introduced by, and pass private bills unacceptable to, government ; it may reject or reduce the demands made by government. Through resolutions, motions of all sorts, and in particular of adjournment, the standing committees and questions, it can express criticism of, or proffer advice to, the Executive Government in the discharge of its functions. Councils in India neglected none of these opportunities ; from a study of their proceedings, it is possible to lay bare some of the tendencies at work in the relation of the legislature to the Reserved Half.

The general outline of that attitude is clear ; the bureaucratic side of government was a body to be criticized rather than assisted ; on occasions, the legislature tended to be definitely and uncompromisingly hostile. Evidence regarding such an attitude is found scattered through the memoranda of provincial governments and the proceedings of legislative councils ; it is sufficient here to cite one⁴ : "The attitude of the two organized parties

which commanded the votes of the majority of the non-official members was uncompromisingly hostile to government on the reserved side." Indeed, the most valuable piece of evidence regarding this is supplied by the tendency of the legislature to view with sympathy the activities of a department, once reserved, as soon as it was transferred⁵.

LEGISLATION AND ADMINISTRATION

Apart from the provision of funds, the functions of a legislative body may broadly be divided under three main heads. The first of these is the constructive, viz., the making of laws. The second is the eliciting and dissemination of information with a view to enlightening the people as a whole as to the acts and intentions of the administration. And finally there is the function of criticism both of the policy of government and of its acts.

In legislation, the experience of the Bihar Government⁶ is typical: the reserved side had the greater difficulty in getting legislation through the Council; not only were Bills introduced by Government defeated,⁷ but those introduced by private members and opposed by government were passed⁸. Provincial governments complain that the Executive Council was not able to secure at the hands of the legislature an agreed solution on the lines they desired for the difficulties felt in the working of particular acts; they felt they could not, without

antagonising the popular element, resort to the special powers vested in them.

The critical attitude of the Legislative Council is equally in evidence in respect of the acts of the administration, and was expressed through the resolution, the motion of adjournment and the question. A resolution usually aimed at stimulating government to greater activity in regions where it was supposed to have been guilty of lethargy, or curbing what was represented to be the excessive or unnecessary use of its powers in other spheres. The eagerness of the Council to set matters right in the reserved departments may be gauged from the fact that in one province⁹ during the first three Councils, the number of resolutions received in the reserved departments was 621, 1,682, and 1,498 respectively, as compared with 285, 429 and 632 in the transferred departments. In another¹⁰ for every one resolution which related to a transferred subject, there were nearly two relating to reserved subjects. Adjournment motions tell the same tale. These justify the remark that whereas theoretically the Council should have paid particular attention to the administration of the transferred departments, in practice, reserved subjects were given much greater attention.

The number and range of questions asked is another index to the same tendency. In one province¹¹, the average comes to 3,000 questions per

year ; on one subject alone—the Arms Rules—340 questions were asked. Local and sectional grievances were assiduously ventilated, particularly in regard to the public services ; every public event, such as a riot, provoked a crop of questions, mostly of a critical tendency. Conspicuous use was made of them to criticise the actions of the police, the treatment of political prisoners, and the alleged indifference or misconduct of officers. All these were asked ostensibly for information, but the information so given was later used for an attack on government, through the resolution or the right to ask supplementary questions. This right was very freely used, sometimes as many as 28 supplementaries being asked to one question, the situation and the manner of question closely suggesting the atmosphere of the courts. A noteworthy development in the use of the supplementary questions was to pave the way for a motion to adjourn the House on the ground that the answers given were not satisfactory.¹²

PROVISION OF FUNDS

This unfriendly attitude is perhaps best in evidence in the Council's unwillingness to provide money for reserved departments. Especially in Bengal and the Central Provinces¹³, the Councils made reductions of whole grants for reserved departments,—and this, be it noted, even before the

advent of the Swarajya party, pledged to obstruction.

IGNORANCE OF THE CONSTITUTIONAL POSITION ?

This has given rise to the charge that Councils treated the reserved departments, as if they were transferred, and that they were unable to understand their constitutional position—*vis-a-vis* the reserved departments and the transferred departments respectively. The essential distinction, of course, is that ministers, being responsible to the Council, were quite properly dependent upon them for the granting of supply. If they refused to vote the supply asked for, the ministers had their remedy: they could transfer the responsibility for carrying on the administration with what they regarded as inadequate funds from their own shoulders to the Council, *i.e.*, they could resign and those who had refused them the supply could be called on to assume the responsibility of administration in their place. The Reserved Half, being responsible to another authority, could not transfer their responsibility to the Council, and the Council could not, in the words of the Earl of Ronaldshay,¹⁴ use the right of moving reductions in the case of reserved subjects as part of the regular practice of the Council, to deprive the Reserved Half of the supply which they considered necessary for the administration of their departments.

The question then arises, what was Parliament's intention in giving to the Legislative Councils the right of moving reductions ? The intention must be to provide the Council the means of obtaining from Government information in connexion with the reserved subjects, and to enable them to express their opinions on questions of policy affecting them. The reductions must, in other words, be token cuts, to elicit information and to express opinions and influence policy ; only in extreme cases could they give emphasis to their wishes by voting an actual or substantial reduction of supply. The theoretical soundness of the argument cannot be questioned ; there is a definite recommendation¹⁵ in the Report of the Joint Select Committee that the Budget should not be capable of being used as a means of enabling ministers or a majority of the Legislative Council to direct the policy of reserved subjects. Point could have been given to this distinction in the rules and standing orders of the Council, by restricting the right of the Council, in respect of demands for grants relating to reserved subjects, to move token cuts only. As it was, the right given to the Council to move reductions in grants was sometimes interpreted, as though the Council could substantially reduce the grants, put the Reserved Half without funds and so direct policy in those departments or compel them to resort to their extra-ordi-

nary powers. We cannot, however, ascribe this tendency wholly to the ignorance of the constitutional position ; for very often the debates show that members more than knew the constitutional position ; indeed they used the power to throw off the fetters of dyarchy. Thus when the demand under ' Executive Council ' was sought to be reduced¹⁶ in order to discuss the question of the transfer of all portfolios to responsible ministers, the grievance sought to be redressed was political, virtually the existence of dyarchy itself. Suffice it to say that dyarchy as a system is a standing invitation for such abuse of power ; it is obvious that this could hardly be the intention of the framers of the constitution.

THE TENDENCY TO EXAGGERATE

We must be on our guard, however, against exaggerating this tendency of the legislature to be unduly critical of the reserved departments. In part the practice of the early years of moving substantial cuts was due to the abnormal fall in revenue in the early years of the Reforms period and to the want of grasp of the principles of budgetary criticism. With the improvement in the revenue position and growing experience, the practice was largely discontinued in favour of token cuts, except of course where obstruction was adopt-

ed as a political weapon. The following table¹⁷ relating to Madras is significant :—

Year	Token cuts	Substantial cuts
1921-2	28	236
1922-3	43	145
1923-4	75	128
1924-5	70	31
1925-6	69	26
1926-7	174	10
1927-8	87	4
1928-9	61	2

Substantial cut motions pressed to a division in 1927-8 and 1928-9 were 2 and 1 respectively.

Very often, it was the desire to give expression to specific grievances that led to this critical attitude. Redress of grievances before supply is a recognized parliamentary method; in many instances, a cut motion or even a substantial reduction was only a method, though the latter was more relevant in the transferred departments, by which the Council sought to have a grievance remedied. These grievances were legion. Better representation of the various communities in the services, remission of land revenue on account of floods or failure of rains, better treatment of prisoners in gaols, and a thousand other objects were sought to be achieved through the Council's power to reduce demands for grants. That this is true is evidenced not only from the fact that the cut motions were withdrawn on an assurance from government, but also from the Council's willingness¹⁸ to

pass a once rejected demand when placed later for reconsideration.

This line of development cannot be considered out of accord with the intentions of the framers of the constitution. Montagu, in moving the second reading of the Government of India Bill, distinctly said,¹⁹ in words reading like a message which he would have the Parliament send to the Indian people, "You are being given great responsibility to-day, and opportunities of consultation and influence on other matters in which for the present we keep responsibility." The whole tenor of the constitution, in fact, regarding the relation of the legislature to the Reserved Half, is that the legislature might influence, not control, them.

EXPERIENCE OF BOMBAY, BURMA, U.P. AND THE PUNJAB

Again, the experience of some provincial governments, as recorded in their memoranda to the Indian Statutory Commission, suggests that the legislature was often reasonable in its attitude towards the Reserved Half. Thus the proceedings of the Bombay Council show no desire on the part of members to embarrass government; indeed, the government acknowledges²⁰ the spirit of co-operation and reasonableness which they showed. The Burma government records²¹ that the government, while influenced by the Legislative Council,

usually succeeded in securing acceptance of its views. In the first two Councils, Government succeeded in passing all the legislation it put forward ; and all the private Bills which it opposed were rejected. In the voting of demands for grants only four amendments were carried against it, and only once was it necessary to restore a grant. In the United Provinces, the Government was able to say,²² after a consideration of all the relevant issues, that the Council as a whole had given government a reasonable amount of support on the reserved side ; departments like the gaol, justice and police were, in addition, gratified that on more than one occasion, there was recognition by the Council of their efficient administration. The Punjab Government²³ records a similar experience. While in the early years, there was a tendency to be critical, the Council was, on its part, by no means unreasonable, and was prepared to be convinced that a different point of view from theirs was possible ; indeed they go further and say that the lump reductions made by them from demands were more than once justified. Tributes by governors²⁴ in their addresses to the Council, to the steady judgement of the legislatures and their sound political sense as shown by their loyal support to Government in the task of restoring order, though they may not be taken literally, are still valuable as an additional indication of the expe-

rience of these provincial governments. Indeed, there are instances²⁵ where the Council frankly declared its intention not to interfere with the reserved departments, on the ground that they had no legal right of control over them. The view was expressed that it would not be proper for the Council, to take upon itself the responsibility of judging what expenditure was necessary and what was not ; when those subjects were placed under popular control, and a minister was in charge, they then could, and would willingly, take the responsibility.

THERE ARE SUBJECTS AND SUBJECTS

The attitude of the Councils was not also the same towards all reserved subjects. Thus their attitude towards irrigation, in marked contrast to that towards law and order, was distinctly sympathetic ; in general, councils showed²⁶ a willingness to support the Reserved Half in their proposals for the improvement of irrigation, unless they prejudicially affected vested interests. Criticism there was, but it was for the most part fair and reasonable, and also in some cases constructive. According to a competent observer²⁷, the Irrigation department (reserved) had a good deal more influence in the Council than the Buildings and Roads Department, which was transferred. In the one case members saw, before their eyes, great tangible advantages : the production of crops in ten

or eleven million acres of cultivation and a large surplus revenue owing to the reduction of general taxation. In the other case, members saw only buildings constructed for official purposes and a road system which was admittedly far from perfect, and a large expenditure with no revenues set against it. In fact a study of the debates in the Councils suggests the observation that Education, Co-operation and Irrigation were highly appreciated, and could generally get all that they wanted, but that the Councils looked askance, with varying degrees of suspicion, upon most other expenditure.

This observation at least shows that the attitude of the Council was not shaped entirely by the fact that one department was reserved, and another transferred ; rather they judged and shaped their attitude, partly at any rate, by the tangible advantages that resulted from the policy of the two sides of government in their respective spheres of work.

OTHER FACTORS

Allowance must be made for a number of other factors. Thus at the beginning of each Council, there was a tendency to reject items of expenditure, merely because they were not understood. Most of these motions for reduction based on this tendency were withdrawn after full explanation was given. Again a close analysis of the debates

in the Councils reveals that, in part, the tendency to view the acts of the non-responsible half with disfavour was born of a desire on the part of the elected members to give expression to what might be called the 'popular sentiment' on a question. In days when political agitation had affected the whole country, for instance, it would be futile to expect that it would not have its repercussions on the floor of the Council. Members of Council thought they were merely reflecting public opinion in the constituencies, when they made the activities of the police a target for attack. There is such a thing as popular sentiment, and legislators cannot escape its influence. Witness a frank confession²⁸ : "We thought there was famine in the country, and we thought that our action in voting supplies for the police would not be approved by constituencies when government had not been able to help the famine-stricken people."

This attitude of unfriendliness was partly the outcome of ignorance : non-official members of the Council did not know the other side of the picture. If all the facts and the grounds were made known to the Council, an ex-minister has said,²⁹ they would take a different view. As it was, they were being asked to express a one-sided or *ex-parte* opinion ; they did not know the government side fully.

There is one other mitigating factor ; the

members of the legislature could not afford, consistently, to alienate the sympathies of the Reserved Half, for they were in charge of important departments, affecting the lives of the people whom they represented ; they had, as a member of the Council put it, to strain every nerve to see that things were properly done. In the Bardoli agitation, for instance, the members of the Surat district secured the co-operation of the members of the Executive Council like Sir Louis Rieu, which brought about the happy termination of the Bardoli question in the interest of the whole Presidency.

Bearing these qualifications in mind, the Council's attitude to the reserved departments may perhaps be best expressed thus :—“ A legislature with ministers responsible to it for certain departments of government naturally looks across the boundary to the forbidden territory reserved for a different system of administration.” They felt in it an interest, more interest than the reserved members of the government liked the Council to feel, and also they felt a responsibility as representatives of the tax-payer to see that there was efficient administration, as well as economy of expenditure. Their readiness to vote expenditure or taxation was lesser than in respect of the Transferred Half ; as a general rule new expenditure in the transferred departments was passed if it satisfied the criterion of desirability, while in the

reserved departments, it had to satisfy the criterion of necessity.

REASONS INHERENT IN THE SYSTEM

There are reasons inherent in the system why the Council's attitude was generally far from friendly. The division of subjects undoubtedly prejudiced the Council against reserved and in favour of transferred subjects. When they were held responsible for the proper administration of a certain half of government, and when they were conscious that any advance in the direction of full responsible government would be judged by a parliamentary commission in the light of their record, the prejudice was but natural; as more than one provincial government has recorded¹³⁹, in the absence of such division, it is quite likely that they would have held a more even balance. In regard to the Transferred Half, they could bring the Government to book; in respect of the other half they could not do so. The sense of powerlessness over the reserved subjects led to a sense of irritation and despair: these subjects were the concern of an irresponsible government. Besides, they were concerned mainly with the security services. It may be said as a general rule that the government of no country can afford to administer the unpleasant departments—the departments which extort taxes and punish the

people, unless it is in a position to draw on the good-will that accrues to it from the benevolent departments. Under dyarchy, the official members of the government take all the unpleasantness. They have to collect the taxes. They have to control the people, keep law and order, and do everything that is unpleasant ; the good-will that elsewhere supports such departments, through their administration of the benevolent departments, here goes to the Transferred Half of the government. The general use of the phrase 'nation-building departments' for exclusive use in reference to the transferred departments indicates the general state of dislike towards the reserved ones. Complaint was made that the nation-building departments were starved, and as a natural corollary, expenditure on the reserved departments was excessive. Not only was the Council therefore tempted to oppose any expansion or increase of expenditure on the reserved side ; retrenchment on it was urged in every direction. Shrewd students had, at the time when the merits of dyarchy were being discussed, already anticipated³¹ that this would be the inevitable tendency.

IV

HOW THE EXECUTIVE REACTS

The government legally had power to override the opposition of the Council ; but it could, ob-

viously, ill afford to have frequent resort to its special powers. Normally, the Reserved Half tried, then, to get as much support as it could in the legislature.

The personal influence of the Governor was an important, though invisible, factor. Individual members of the Council interviewed the Governor and attended his parties. Having had all the honour and patronage in his gift, he naturally exercised great influence.

Again, the practice which developed of having standing committees of the Legislative Council with advisory powers and attached to departments of government, like Finance, Irrigation, and Police, to some extent helped to establish harmonious relations with the Council. Major questions of departmental policy were laid before them as well as schemes involving large expenditure, and annual reports. Their place in shaping the relation of the Reserved Half to the Council was this: they enabled Government to explain their proposals to a smaller circle and in a calmer atmosphere than that of the Council chamber, and to be advised of the non-official view on important questions of policy. The critics of the government got some glimpse of the difficulties which beset the administration of a province; informal discussion in such committees brought hard facts home to the most critical; they in turn

communicated these difficulties to their brethren in the Council, and could be trusted to canvass some support for Government and bring a sort of steadying influence to bear upon the whole legislature.

The practice of appointing these committees was, however, neither uniform, nor did it always prove valuable; it was also not confined to the reserved departments. Thus Bombay³² had no such standing committees, while Bengal³³ tried eleven. The Bihar government³⁴ found them useful, but the Central Provinces and Bengal governments³⁵ found them of little value in interpreting the non-official point of view, or gaining the support of the Council. The approval or disapproval of a committee offered no guarantee of approval or disapproval in the Council. Indeed, in one instance, the non-official members of a committee opposed in Council a project approved by the committee, while the occasions on which the Council disapproved of expenditure approved by its committee were numerous.

These apart, three factors in particular helped the government to get some support in the Council. Ministers were bound by various ties to rally to the side of the Reserved Half, and with them the ministerial supporters; the number of groups into which the Legislative Councils were, invariably, divided made it easy

for Government to get fair support from some group or other for their policy ; and lastly, the Councils contained a good proportion of nominated members. The first two are dealt with elsewhere³⁶ ; the last needs some elaboration in this context.

THE NOMINATED BLOCK

The nominated members were of two sorts, the official and the non-official. The Act provided that of the total strength of a legislative council, not more than 20 per cent. were to be official members ; and at least 70 per cent. were to be elected members. The actual number of official and nominated members and the proportion they bore to the total are set out in the following table :—

	Statutory minimum.	Elected.	Nominated officials plus Executive Councillors.	Nominated non-officials.	Actual total.
Assam ..	53	39	5 2	7	53
Bengal ..	125	114	12 4	10	140
Bihar & Orissa ..	98	76	13 2	12	103
Bombay ..	111	86	15 4	9	114
Burma ..	92	80	14 2	7	103
Central Provinces ..	70	55	8 2	8	73
Madras ..	118	98	7 4	23	132
Punjab ..	83	71	13 2	8	94
United Provinces ..	118	100	15 2	6	123

The theory underlying the nomination of officials, of course, was that their official experience was invaluable ; it helped to steady discussion, and kept it to practical issues ; they supplied members in charge with material to answer supplementary questions, or meet points raised in debate ; they kept themselves in touch with the responsible criticism of the administration, and could speak for the member when required to do so. The nomination of non-officials was meant to provide representatives for areas, communities and interests, which, owing to inadequate communications and consequent lack of voting facilities, illiteracy, absence of organization or other disabilities, would otherwise be unrepresented in the Council, e.g., Labour, Depressed Classes, etc.

The crux of the problem, relevant to the present discussion, is were they, in theory or in practice, bound to vote for the Reserved Half ?

Regarding the officials, the intentions of the framers of the constitution can be gathered from the early documents.³⁷ The authors of the Report on Indian Constitutional Reforms thought that the nominated officials should ordinarily be allowed freedom of speech and vote, except in so far as Government thought it necessary to give them instructions. The Government of India in their *First Despatch* agreed with this view. The Joint Select Committee went a step further, and would

give official members, except members of government, unfettered freedom of speech and vote.

In theory, the freedom of nominated non-officials to vote could not, of course, be limited, for the idea of their nomination was to make up for the lack of representation of communities or interests, and any restrictions on their freedom of speech and vote must militate against the *raison d'être* of their nomination.

The practice was, broadly, not in keeping with the intentions of the framers of the constitution. It was almost the universal practice³⁸ for Governments to require officials to vote with them except when asked to remain neutral, or specifically and on rare occasions, given freedom of vote. This attitude, they said, required little defence. The government must be carried on, and could not be carried on by means of frequent resort to exceptional powers. Had it not been for the certain and consistent support of the officials, one of two results would have followed: either Government, on the reserved side, would have become subservient to the legislature—thus³⁹ many reductions of the budget grants would have been made, or the Governor would have had to resort frequently to his special powers. The former would have affected efficiency: the latter would put the Government on their defence and increase their unpopularity.

To allow officials freedom to vote raises other

difficult issues. Ordinarily in regard to matters coming before the Legislative Council, the Local Government would take a line which they considered correct, and to which they attached importance. To allow official members freedom of speech and vote in such cases would result in presenting to the Council and the public the highly undesirable spectacle of the officers of government in open disagreement with the authority which they served, since there would obviously be no point in allowing freedom of speech and vote except in cases where those affected were not in agreement with the government. Freedom of speech and vote, it may be urged, was obviously possible only when the Government was content to leave its own attitude an open question.

If it was desirable that officials should not ordinarily be free to vote as they liked, it was obviously even more desirable that they should not be allowed to speak as they liked—nay, in one or two instances in the United Provinces, it appeared that Government defeats were due to the speeches of heads of departments and Sir Harcourt Butler ordered that no head of a department should speak⁴⁰ in the Council 'except when expressly asked by his Honourable Member to do so'. Elsewhere too, in regard to speaking, the normal practice was that official members spoke only when the member of government in charge of the subject

asked them to do so.

The system of official members, voting by order and irrespective of their personal views, clearly, has important defects. It is fatal to principles which should govern public debate; it is derogatory to their own position; it is insincere, and, as Mr. Gladstone saw many years ago, the conflict between conscience and discipline may become acute; it is wasteful of their valuable time. As has been forcefully said, the practice operates to prostitute the principle of free and conscientious judgement by individuals, upon which alone responsible government can rest. Above all, the spectacle of official members invariably voting together on one side like a machine, and the bulk of the non-official members invariably voting together on the other, tends to emphasize the attitude of Opposition taken by the non-official members. There is, in fact, reason to believe that on certain subjects the non-officials voted against government simply because they were quite sure that the official block would save them, and that they would gain a certain amount of popularity with the people with whom they came in contact by taking a line which was anti-government.

This is not to say that the official block served no purpose. They often tempered the extravagant communal claims on the part of a community that had majority representation; they also supplied a

valuable element of experience and a steady influence. But constitutionally, in a dyarchic system, they, undoubtedly, and by their very existence, accentuated the cleavage between the popular element in the legislature and the Reserved Half, while no doubt helping the latter to escape defeats in many divisions.

Nominated non-officials are not servants of government, and presumably, they have freedom of speech and vote. Experience belies this presumption. In general, it was found, government could rely also on their votes. The members were conscious they owed their seats to the government, and therefore, did not feel free to act conscientiously. This handicap was more than once unequivocally expressed⁴¹ on the floor of the House by the nominated members themselves, when they were face to face with political crises.

Instances no doubt exist where nominated non-officials voted against government⁴²; the fact that they were also found in the ranks of nationalist parties,⁴³ calling themselves by different labels, the Progressives or Independents, who sometimes voted in opposition to government, also raises a presumption that they could take an independent line; but these were the exception. The position of the nominated non-officials was most unenviable. On the one hand there was the pressure on them from the Government whip; the advice given by Lord

Carmichael⁴⁴—that governors should not canvass the votes of nominated members—was not followed. The Government, we are told,⁴⁵ did not think they were precluded from seeking support from any section of the House. On the other hand, if they conscientiously voted with the government truly representing the feelings of their community, their vote was discounted in the public eye as being the result of an undue government influence ; so their motives were questioned, and their influence considerably curtailed. There is another factor. The Government in nominating persons was, quite naturally, prone to keeping its eyes on the number of votes it could command in the legislatures. It would hesitate before nominating a man of absolute independence of judgement. Cases have happened in the past, we have it on good authority,⁴⁶ where, according to public opinion, nominated members who exhibited any large measure of judgement and independence were not renominated. The knowledge that the power to renominate existed kept the nominated member at the call of the Executive. What is important to note is that in the eye of the public, a nominated member was given a seat on the understanding, if not on the condition, that he should behave as a friend of the Executive. It is interesting to observe that in the 1928 Session of the Madras Council, the depressed class representatives demanded election on the ground that

elected members had greater freedom in voting than nominated members.

IF DEFEATED

Notwithstanding the support of the nominated block, and the help of ministerial groups, defeats in the legislature are possible, and were not rare, such as over a government Bill or a demand for grant. If the defeat was over a Bill relating to a reserved subject, the Member in charge had then several alternative methods open to him. The two extremes were a readiness to resign on the one hand, and to yield to the wishes of the Council on the other. The resignation of a member of the Reserved Half in such a context, it is of course clear, is not on the same basis as that which applies to the Transferred Half. In the whole history of dyarchy, the writer knows only one instance in which a member of the Executive Council chose to resign consequent on a defeat on a major issue, *viz.*, the resignation⁴⁷ of the Law Member in Madras in March 1923 on the defeat of the Irrigation Bill sponsored by him. When the Law Member threatened to resign, the Governor had, no doubt, the alternative of dissolving his Council, but with greater discretion than valour, he chose to accept the resignation. One Governor, it may be remarked, also thought⁴⁸ that if there was practically unbridgeable cleavage of

opinion between the Governor and his Council, he would consider it his duty to place his resignation in His Majesty's hands.

To yield to the wishes of the Council, if it were always possible, would, of course, be the best method. "Those suggestions made on the floor of the Council will be borne in mind by government, and, as far as possible, effect will be given to them" was an ordinary escape out of a difficulty. Often, too, provincial governments did give effect to the resolutions passed by the Council as may be seen from their memoranda. When the opposition of the majority was due to a real difference of opinion, and not a mere desire to obstruct, provincial governments often showed⁴⁹ a tendency to yield, and to make concessions. It was the proud boast of Bombay that the Government always found it possible to accept the reductions made by the legislature; but that is an exception, clearly due to a rare spirit of accommodation on the one side and moderation on the other. Indirectly, there was a reluctance to place before the Council matters in which there was reason to think that the attitude of the Council would be hostile; for instance, Bills for consolidating and modernising the laws relating to police administration were withheld because of the Council's doubtful attitude. But, after all is said, there must be a sphere where the Reserved Half, by the very nature of its position, would not yield

to the wishes of the Legislative Council, and where the Council would not accept their viewpoint.

SPECIAL POWERS

The final remedy was for the Governor to have recourse to his special powers. In respect of legislation he had power, at any stage in the passage of a Bill through the Council, to direct that the Bill or any clause of it, or an amendment affected the safety or tranquillity of his province or any part of it, or of another province, and that no further proceedings should be taken by the Council in relation to the Bill,⁵⁰ clause or amendment; he might return a Bill for reconsideration by the Legislative Council, together with any amendments which he considered necessary or valuable⁵¹; he had power to withhold his assent to it⁵² or reserve it for the consideration of the Governor-General⁵³; he might certify that the passage of a Bill relating to a reserved subject was essential for the discharge of his responsibility for the subject,⁵⁴ and thereupon the Bill was deemed to have passed. Adequate provision was made against the abuse of this extraordinary power by the requirement of having to obtain His Majesty's consent to it before it could become operative. He had power also to certify that the expenditure provided for by a demand relating to a reserved subject was essential to the

discharge of his responsibility for the subject, and the Governor could then act as if the Council assented to the demand.⁵⁵

ARE THESE POWERS EXCEPTIONAL ?

The Governor was clearly and authoritatively⁵⁶ told that such powers were real, and that their exercise should not be regarded as unusual or arbitrary ; for unless the Governor had the right to secure supply for those services for which he remained responsible to Parliament, that responsibility could not justly be fastened upon him.

But even in theory the power of the Governor to over-ride the legislature must not be construed as giving him a free hand ; it was hedged in with limitations. The Governor, for instance, was not expected⁵⁷ to over-ride his legislature until he had given every opportunity for the matter to be thoroughly discussed in the Legislative Council, and *as a sensible man*, said the Joint Select Committee, he should, of course, endeavour to carry the Legislative Council with him in the matter *by the strength of his case*. These are weighty words. A Governor must count upon his being dubbed tactless, or his case considered weak, if he resorted to his special powers. Apart from this contingency, as every act of this sort was likely to expose him to attack in the Council and to criticism in the Press, it is quite conceivable that a Governor might shrink from

carrying out this duty even when he felt that he ought to undertake it, and perhaps prefer, as the Earl of Ronaldshay confessed, to lay down the seals of his office when the existence of a practically unbridgeable cleavage of opinion was visible. Briefly, a Governor, who was always at the risk of being put on his defence, and, having to justify before higher authority his over-riding of the view taken by the legislature, might well hesitate to have recourse to it.

THE PRACTICE

The history of the last fifteen years shows that these wide powers were occasionally, though not frequently, used. In Madras,⁵⁸ for instance, the power to return a Bill together with amendments for reconsideration was used more than once and with useful results, while there are provinces⁵⁹ which did not find it necessary to resort to this procedure. There are also instances⁶⁰ of reservation of Bills for the consideration of the Governor-General, and of veto. The certification of Bills seems to have been used on fewer occasions, the only instance known being the Bengal Criminal Law Amendment Act in January, 1925.

The power of restoring grants refused by the Council was used more frequently, and, in almost every province, Bombay being in fact the only known exception⁶¹. An analysis of the occasions

when the power was used suggests some general principles in their application. The Governors, when they restored grants, almost in every case, tried to justify before the Council, their use of the special power ⁶²: sometimes part of the expenditure covered by the rejected demand had already been incurred by Government, who were therefore obliged to fulfil the obligations which they had contracted, *e.g.*, clerks had been engaged and their salaries had to be paid; part of it might be to cover expenditure in service under the administrative control of the Central Government, *e.g.*, the High Court in Bengal, the Local Government being instructed by that Government to restore the vote rejected; the vote of reduction had been carried without Government getting an opportunity to explain the position; in other instances, expenditure, as judged by the average of a number of preceding years was considered the minimum necessary for the carrying on of administration. Again where very large amounts were rejected, the Governor certified only a part, yielding to the wishes of the Council in those matters which could be postponed without serious detriment to the administration, or loss to the provincial revenue, the governing consideration being that where the demand was rejected on considerations of economy, the Government should try to meet the Council half-way, but where demands were rejected with a view to wreck

the constitution, they were automatically restored. Where the demand was rejected by a narrow majority, and in circumstances which were not fully understood, in other words, where there was an element of doubt as to whether that vote really represented the considered view of the Council, the Governor thought it more prudent to certify such sums as were necessary to keep the service going, up to the reassembly of the Council when the demand was resubmitted to the Council. Elsewhere, when the Governor certified large sums, he certified them less a token sum,⁶³ out of deference to the views of the Council and to indicate the fact that his government had taken note of the opinion given, and that the matter would be looked into further.

The question may now be asked—has the hope of the Joint Select Committee that the exercise of these powers should not be regarded as unusual been realized? It may safely be said that it has not been; any exercise of these special powers of the Governor was regarded by the Council and by the politically-minded classes as being against the spirit of the constitution. Indeed on one occasion⁶⁴ the Nationalist and the Swaraj parties in a provincial council combined to oppose a demand, not on the merits, but as a protest against the use of the power of the certificate. The facts show that what really counted in practice, in spite of the injunc-

tion of the Joint Select Committee, was the rooted belief in the minds of politicians and of the public that these powers would in effect be very rarely exercised.

V

SOME CONCLUSIONS

This study of the relations of the Reserved Half with the legislature leads to some definite conclusions. As no government can endure by the continual use of powers which are considered emergency and unusual, it is the experience of provincial governments that the Governor often gave way on points of lesser importance in order to gain his way in essential matters. The efficiency of the reserved departments was to some extent affected. The Government were conscious they must, unwillingly, yield to the wishes of the legislature if they wanted to secure their co-operation and prevent continuous and open rupture; often schemes considered necessary in the interests of efficiency were put aside, because of the uncertain attitude of the legislature. A standstill policy was easy, and, for a government not responsible to the people, likely to appear more convenient and preferable to facing the Council's opposition.

And a third idea emerges. Under a dyarchy,

i.e., so long as a sphere of government that is not responsible to the Council continues, the need for the special powers is obvious,—their *raison d'être* is that of dyarchy itself, *viz.*, the unpreparedness to entrust a popular legislature with full responsibility and powers. But their very existence had at times a prejudicial effect on the responsibility of members. Members were induced to vote against budget allotments⁶⁵ for reserved departments in order to gain a little cheap popularity, when they would not have so voted had they not known that the Governor could, and, as they thought, probably would, restore the allotment if the Council cut it out; they were sure that in spite of their rejection, the administration would go on 'as smoothly and as nicely as possible.' An experience recorded by Lord Cromer^{65a} perhaps best brings out this idea. He received a petition asking for the total evacuation of Egypt by the British. He was surprised to find among the signatories an old Arab Sheikh, who was known to be one of the best friends of the British in the country. He asked the Sheikh what was the reason for his support of this extreme movement. The Sheikh smiled and answered, "It is all empty words. I often say to my camel or my horse, if, in some trifling way, he tries my patience, 'Curses on you. May Allah strike you dead, O son of a pig.' If I thought it would really happen, I should be silent; but I know

that the beast will remain uninjured.” The habit of irresponsibility grows on what it feeds. What is an innocent outburst of impatience in the case of an individual, when applied to public affairs, is productive of great harm : legislators conveniently shift their responsibility to others ; they do not get the habit of taking decisions, of relating means to an end, in short, they do not get the necessary training in the art of self-government. A curious result of this tendency is that while on the one hand, a keen desire was expressed to secure retrenchment and reduce taxation, measures of improvement, which in practice must require more money, were advocated on the other.

INDIRECT ATTEMPTS AT CONTROL

And lastly the legislature betrays a tendency to enquire too closely into the details of the Executive Government. The weaker a legislature is, the more it tries to interfere. The debates show that this attitude was partly due to the feeling that one half of the government was not responsible to the Council and therefore might perhaps be guilty of extravagance or arbitrary actions. Not content with criticism, a tendency was developed to claim a share in executive authority, admittedly on the ground that in the absence of a truly responsible executive, the direct intervention of the legislature was justifiable. One method of doing so was the

the attempt of the Council to fetter the discretion of the Executive in rule-making power. Thus all rules and regulations made by the Executive under their rule-making power were required to be submitted either to the whole Council or to a Council committee, before they were put into force. A singular instance⁶⁶ is supplied by a Police bill passed by the Bombay Legislative Council, requiring that a copy of every order given by government, directing the imposition of a rate to defray the cost of additional police in any area, should be sent to each member of the Council ; the question whether the cost should be defrayed in the manner specified or out of general revenues should, if so required, be decided by a resolution of the Council. The Councils passed resolutions⁶⁷ to appoint committees to enquire into revenue cases, recommended the grant of land to a pagoda, wanted power to decide on political prosecutions and to examine proposals for the revision of settlements. The large number of questions or resolutions dealing with the pay, promotion, punishment or prospects of particular individuals⁶⁸ further illustrate the same tendency.

It will at once be admitted that this is an undesirable trend. A deliberative body cannot suitably deal with details because its constitution unfits it for such work ; its machinery is clumsy ; the necessary knowledge is lacking ; and the consump-

tion of time and labour disproportionate. It derived its inspiration partly from distrust of an irresponsible executive ; it is not curious that when the ministry was equally distrusted, the same tendency appeared.

CHAPTER V

THE RESERVED HALF VIS-A-VIS THE TRANSFERRED HALF

I

POINTS OF CONTACT

A first essential of dyarchy is a division of functions ; but is it possible to demarcate the various functions of Government into two distinct spheres and to lay down that questions arising in one sphere shall be dealt with by one part of the government and those arising in another sphere by another part ? It is the ordinary experience in administration that there is scarcely a question of importance which comes up for decision in any of the departments of government, which does not require to be weighed carefully in the light of considerations which form the province of another department. Take, for instance, the question of enforcing a policy of prohibition. This is, at first sight, essentially a problem for the Excise minister to solve ; and, *prima facie*, if an elected majority of the Legislative Council votes for it, it would appear there are not insuperable obstacles, at any rate because of repercussions on the portfolios held by members of the Executive Council. But as the dis-

cussions in the Madras and Central Provinces legislative Councils¹ show, this is a superficial view. In the first place, it is clear that the more the policy of prohibition is successful, the greater, as it must affect revenue, the concern of the Finance department is in such a policy. Conceivably in provinces like Madras and Bombay, where Excise yields the largest revenue next to land, a reference might be necessary to the land revenue department to explore the possibilities of increasing that revenue. Evasions of the law, if American experience is any guide, must be many, and the co-operation of the police department may be necessary to prevent illicit distillation, and of the judicial department to cope with the larger number of prosecutions.

This interdependence and overlapping of functions raises few difficulties of any consequence when every department is responsible to the same authority ; but where departments are accountable to two different authorities, it raises important constitutional and administrative issues. It is quite possible that the disagreement of one or the other half may be so pronounced that a policy desired by the one or the other may have to be given up. In the instance cited above, if the anticipated fall in revenue is considerable, as indeed it must be, if the policy attains appreciable success, the finance department may suggest that either drastic retrenchment or increased taxation is the only possi-

ble remedy, to either of which other members of the Executive Council may not agree. If they agree to the latter, ministers may not be able to convince the legislature, to whom they are responsible, of the necessity for increased taxation ; they, with the Council, may plead for more retrenchment. In the result, the policy may not be proceeded with.

Similarly, the success of a policy in the reserved side may depend on the co-operation of the transferred side of government. The grave menace to the reserved subject of law and order, which was presented by the Sikh Gurdwara agitation in the Punjab, could only be solved—and was indeed in the end solved—by the promotion on the transferred side of legislation regulating the religious endowments of the Sikhs. Instances like these of the interdependence of the two sides of government can easily be multiplied. When the finances of a province were in deficit, the additional taxation which restored them was partly in the sphere of the transferred subjects. "Certain aspects of representation in local bodies raise communal questions, the reaction of which is not confined to the transferred departments ; questions relating to the proportions taken by communities in government service are of equal interest to both sides of government."

These are instances where co-operation in matters of policy is clearly essential. There are matters

also regarding the principles of which there was no disagreement between the reserved side and the transferred side of government, but where co-operation of the two was a condition of administrative efficiency. Administration is a living business, and, as has been well said, its corpus cannot be dissected with the precision of an autopsy. Thus if the district officer was primarily an agent of the reserved side of government, yet in the exercise of his statutory functions in regard to local bodies, he was definitely an agent of the transferred side and his influence in promoting schemes of rural sanitation and education or in dealing with measures for the prevention and control of epidemics was of the greatest importance to it. The agricultural department obtained its crop statistics from the revenue department, but, apart from this, the co-operation of revenue officers was of the highest value to the department in the promotion of improved methods of cultivation, in the consolidation of holdings, and in the working of co-operative societies. It was the village watchman and the village accountant who gave the Health department its vital statistics.

It is obvious then that some rules of business must exist to regulate matters of common interest to see that the wheels of government worked smoothly. The substance of these rules framed in the provinces is that, in case of difference of opinion, the Governor was ultimately the deciding

authority, but opportunities were provided for mutual discussion and agreement with or without the interference of the Governor.

THE RULES OF BUSINESS

To come to details. There were differences between province and province in the rules regulating the relations between the two parts of his government. Perhaps this is inevitable, for the Act vested in the governor of each province the power to make rules, provided of course they were not inconsistent with the Act.

Broadly, financial matters apart, the 'mixed' cases fall into the two categories—those cases in which the issues are of such a nature that neither side of government can agree with which the right of action lies, and those in which the jurisdiction is not doubtful, but which may involve the interests of other departments. Strictly speaking, the latter type of 'mixed' questions falls into two sorts again, though it would be difficult, if not impossible, to draw any clear line of distinction between the two, *viz.*, cases arising in a reserved department which affect the administration of a transferred department, and cases arising in a transferred department, which affect the administration of a reserved department.

In these mixed cases, the rules provided that the minister or Member of Council might ask for

papers on action taken or proposed to be taken in matters affecting his department ; if the Secretary to the department objected, he had, before refusing to comply with the requisition, to take the orders of the Member or minister in charge of the department, who in turn might send the case to the Governor. Normally the matter would then be discussed between the Member of Council and minister concerned. If they failed to agree, one or the other would refer the matter to the Governor. The Governor might be able, after personal discussion with the Member and minister, either separately or together to settle the matter ; but if he failed, the question might be brought before a joint meeting of the two sections of the government, when the matter would be discussed but no vote would be taken. If after discussion, there was still disagreement, the Governor would decide the matter.

If the Governor's decision involved action by a reserved department, he had to obtain the concurrence of his Council in such action, if it was a matter of Cabinet importance ; or over-ride his Council under the powers vested in him. If the decision taken required action by a transferred department, the Governor had to require the minister to comply with the decision and to take the action decided on. If the minister was obdurate, the Governor would have to dismiss him and find another minister.

In those cases where the jurisdiction itself was doubtful, it was settled by the Governor, and his verdict was final ; but before the verdict was given, the rules of executive business empowered the Governor to call his whole government together for a discussion of the subject before deciding who was to formulate orders. Where also the decision taken in one department necessitated certain action in another department, which the latter objected to take, the Governor was armed with power to overrule his Councillors or ministers to secure unity of action and to prevent the decision of one side of government being nullified by the inertia or opposition of the other side of government.

We may add that generally all Bills relating to both sides of government were circulated to Members as well as ministers for information ; and that the finance member had power to call for any papers from any department and to require that they, with his notes on them, should be submitted to the Governor for orders.

THE ROLE OF THE GOVERNOR

In such a context, the position of the Governor as a unifying agency assumes great importance. It was for him to decide in case of dispute whether a subject fell within the transferred or the reserved field and to indicate the appropriate portfolio. In questions of common interest, it was inevitable for

him to occupy the position of informal arbitrator between the two parts of his administration; he had to give a decision in cases where they were unable to decide; it was equally his duty to see that a decision arrived at on one side was followed by such consequential action on the other side as might be necessary to make the policy effective and homogeneous. In cases where there was joint deliberation on matters affecting the whole government, he was further directed² so to regulate the business of the government of the province, that, as far as might be possible, the responsibility for each of the two classes of matters should be kept clear and distinct.

From all accounts³, these rules worked smoothly; differences of opinion there were, as indeed they were bound to arise, but they were, for the most part, amicably settled, and friction was avoided. The cases which required the Governor's decision on account of a dispute were few. It was, of course, a well understood rule of business that the initiative in respect of a matter relating to a particular department should be taken by the Member or minister concerned; where the initiative was taken by some other, the mistake, as indeed it ought to be, was rectified. This occasionally gave rise to some heart burning. A minister of Industries in a memorandum⁴ to the Reforms Enquiry Committee stated that, at the suggestion of the

Governor, he once prepared a note with a view to give the Director of Industries, certain powers of initiative, then enjoyed by District Collectors and the Board of Revenue, in the matter of mining concessions. The finance member objected to the note on the ground that a minister could not take the initiative in matters reserved. It is true, indeed, that the circumstance that the initiative in the particular case was taken at the suggestion of the Governor makes the case for the minister appear plausible ; but on a closer analysis, that only shifts the blame from his shoulders ; for, it is clear, the Governor, on the suggestion of the minister, should normally have asked the Member in charge to prepare the note concerned. The smoothness of the ' domestic relations ' in the working of a dyarchic government depends largely on the extent to which the members and ministers confine their attention to cases which relate to their own departments and such other cases as are referred to them on the initiative of the Member or minister in charge. 'A wider interpretation of the constitutional position might lead to an inclination to overlook the fact that subjects are divided into reserved and transferred.'

OTHER DIFFICULTIES

There are other difficulties, however, which arose on account of the interdependence of the func-

tions of government which could not be overcome by any rules of business. One is with reference to the Services, and this is dealt with later. Another is the inconvenience arising from plural control, and is partly explained by the defect in the division of subjects. Thus the Public works department worked under the minister in charge of the department for ordinary civil works, but under the finance member in railway matters ; similarly the Excluded Areas involved plural control in several matters : the Local Self-Government department, as well as the Police controlled the village chaukidars. This last is said⁵ to have caused great concern to the Inspector-General of Police in Bengal, as in his opinion, the Chaukidars, under the dual control, could not be of any use to the regular force as a source of information.

A third type of such difficulty is that certain departments, or certain officers or certain expenditure which were included in the transferred side might be necessary for a subject on the reserved side. Consequently it was possible for a legislative council with wrecking intentions to cripple the administration even of reserved subjects by rejecting demands for transferred subjects ; and constitutionally, the Governor could not restore the items by the use of his certifying power. Thus in Bengal in 1924 the Council rejected the demand for Medical establishment. Certain officers, Assistant Sur-

geons, for example, performed certain duties connected with reserved subjects such as Police and Jails, and their dismissal would impair the efficient administration of such subjects; the refusal to provide for the cost of the office staff of an All-India Service officer (whose salary was protected from the vote of the Council) could make that officer's work difficult; the construction of quarters for the Police might be impossible if the demand for it under Public works—a transferred subject—were refused. These difficulties only point to defects in the actual division of subjects, or in the rules on budgetary procedure, and supply a warning that the division of subjects in a dyarchic system cannot be too carefully made.

II

JOINT DELIBERATION

We have incidentally referred to joint deliberation in more than one context; the subject is important to merit a more detailed study. It appears to the present writer that the working of this element in dyarchy is, personal equation apart, the decisive factor in its success or failure.

RELEVANT TEXTS BEARING ON THE SUBJECT

The authors of the Report on Indian Constitutional Reforms intended that the Government, in

spite of its dual nature and the division of functions, should work as one Government. They considered it desirable that the Executive should cultivate the habit of associated deliberation and that it should present a united front to the outside. As a general rule, except when the Governor preferred to discuss a particular question with that part of his government directly responsible, it was to deliberate as a whole ; the decision, however, was to be left to that part of the government responsible for the particular subject. The Government of India in their *Despatch* concurred in this view, but they laid stress on the fact that consultation should not be allowed to obscure the source of any single act of administration nor to diminish the clear responsibility of one or the other authority for it. In moving the second reading of the Government of India Bill on June 5, 1919, Montagu further stressed the necessity for joint deliberation : his argument was based on the very nature of the dyarchic system and the lines on which it should develop : if reserved subjects were to become transferred subjects one day, it was absolutely essential that during the transition period, although there was no direct responsibility for them, there should be opportunities of influence and consultation. The discussions in the House of Lords⁶ reveal the same trend. Said Lord Islington : a convention should be established that every subject whether a reserved

subject or a transferred subject should be discussed in the united cabinet ; that there should be no secrets between the two wings of the government, whether the official or the ministerial wing ; and that no subject should be isolated from one or the other ; " that relationship, in so far as deliberation and discussion and all the preliminary stages of the subjects are concerned, should prevail as far as possible in the same way as it prevails in this country in an ordinary harmonious cabinet ; and that only when the final decision is reached, and when that decision is a divergent decision, as between one wing and the other, should there be duality of decision. I hope that in every province in India, from the very start, the rule will be established and strictly abided by, that there shall always be unity in deliberation and only duality in decision". The Joint Select Committee agreed that in a large category of business of such a character as to be the subject of *cabinet consultation*, the habit should be carefully fostered of joint deliberation between the members of the Executive Council and the ministers ; in fact there could not be too much of such mutual advice and consultation on such subjects.

THE CONSTITUTIONAL POSITION

The Government of India Act recognised meetings of the Executive Council but contained no specific reference to meetings of the whole government.

In his Instrument of Instructions, however, the Governor was directed to "encourage the habit of joint deliberation. . . . in order that the experience of official advisers may be at the disposal of ministers and the knowledge of ministers as to the wishes of the people may be at the disposal of Councillors." The Devolution Rules provided that important matters affecting substantially the administration both of a reserved and of a transferred subject on which there was disagreement between the member of the Executive Council and the minister concerned as to the action to be taken should be considered by the Governor with his Executive Council and his ministers together, that all proposals for raising taxation or for the borrowing of money on the revenues of a province should similarly be considered by the Governor with his Executive Council and ministers sitting together. In another rule,⁷ though not expressly stated, joint deliberation seems clearly indicated: the framing of proposals for the apportionment of funds between reserved and transferred departments was to be a matter for agreement between the two parts of the government. It is difficult to see how in practice this could be done without a joint meeting of the government.

A POINT OF AMBIGUITY

Were the makers of the constitution clear in their own minds about the exact scope of joint

deliberation ? The review of the main texts which bear on their intentions shows that beyond expressing the general desirability of joint deliberation, and maintaining the separate responsibility, they made no attempt to define its scope with accuracy. Strict constitutional law, as contained in the Act and the Devolution Rules, enjoined joint deliberation only in what might be called 'mixed' cases, *i.e.*, matters of policy which appeared to the Governor to affect substantially the administration both of a reserved and of a transferred subject, *and* in which there was disagreement between the members of the Executive Council and the ministers, all proposals for raising taxation and for the borrowing of money on the revenues of a province, and, by implication, the framing of proposals for the apportionment of funds between reserved and transferred departments. But the reports of committees and the speeches of statesmen, which should disclose the intentions of the framers of the constitution, would have the Governor extend joint deliberation to other cases, *i.e.*, cases which concerned only reserved subjects or transferred subjects or concerned both but in which no difference of opinion had manifested itself. Indeed it is the spirit underlying these pronouncements that found embodiment in the direction to the Governor in the Instrument of Instructions to encourage the habit of joint deliberation. It is impossible not to feel

that this general direction was an escape out of a difficulty, *viz.*, to define the exact scope of joint deliberation. Perhaps it defies definition in legal phraseology, and therefore the discretion of the Governor could be trusted to limit or extend it in practice as occasions arose. In fact there is reason to believe that the framers of the constitution did anticipate the possibility of a large diversity in practice in the matter. Thus Montagu said, "If the circumstances of a particular province make it possible, there is nothing in the Bill which would prevent a governor trying to discharge all the reserved functions as if they were transferred. He can call his government together and say, 'I do not believe much in this dual form of government. Let us see if we cannot get on together. . . . We will always consult together' ". He then went on to discuss the case of another governor who might say, "I am not going to consult you. I like the good old way. I believe that good government or what I think is good government is far better than self-government. . . ." etc.

THE VARYING PRACTICE OF LOCAL GOVERNMENTS

This theoretical analysis is fully borne out by the experience of provincial governments in joint deliberation. In analysing that experience, we may, broadly, distinguish those provinces where more or less a consistent attempt was made to work

the principle of joint deliberation to the farthest possible extent, and those which alternated between that system and a strictly dyarchical one.

It would, of course, be impracticable to have every matter small or great decided by the joint board of ministers and members. There must be some division of labour to make it practicable to go through the daily work of government. The central feature of the system tried in Assam, the Punjab, the Central Provinces, Bombay and Burma is that unity in deliberation was preserved in essential matters whether technically falling within the sphere of the Reserved or the Transferred Half, and not merely in 'mixed' cases. As a corollary, separate meetings of the Executive Council were rare, or altogether absent in some years. Thus in Bombay⁸ during the two years 1922-23 only seven meetings of the Executive Council were called, while eighty meetings of the whole Government were summoned. In the Central Provinces,⁹ in the two months of the financial year 1926-27, remaining after the appointment of the ministers, the whole Government was summoned by the Governor to meet on 15 occasions. During that period there were no separate meetings of the Executive Council. In the financial year 1927-28, there were 45 meetings of the whole Government, and two only of the Executive Council. The Punjab Government says¹⁰ that "for some years there has been no in-

stance of an Executive Council meeting unattended by ministers." It is also clear from the evidence relating to these provinces that at meetings of the whole government cases which concerned only the Transferred Half or the Reserved Half of the Government were also discussed. Instances are on record¹¹ where for considering questions relating to the Transferred Half only meetings of the whole government were summoned and vice versa.

The actual working of the system was something like this. The initiative for summoning a joint meeting rested with the Governor ; invariably, a Member of Council or a minister could also make a note on the file that a subject should be considered in a joint meeting ; in some of these provinces this was definitely enjoined in the rules of executive business. In order that discussion might be effective, generally, and with exceptions, statements of cases disposed of by each Member and minister and other relevant papers were circulated to all, so that each could know what the other was doing. In those cases where it was not considered possible to show round all papers, the ordinary practice was to put the case in a few words to them at the meeting. We have it on record¹² that sometimes the ministers felt they were not being taken into full confidence, especially as they had no right to call for papers ; they were also not consulted in all the stages of a case¹³ ; and, therefore, did not parti-

cipate whole-heartedly in the discussions. This was perhaps inevitable under the circumstances. But, obviously, these were the exception. In general, we are told, discussions were held in more or less harmony. At the same time the principle of dyarchy—the separate responsibility of the Executive Council for the reserved subjects and of the ministers for the transferred subjects was not generally allowed to be obscured, provision being made to that effect, as in Burma, in the rules of executive business. But as the Bombay and Punjab evidence makes clear this was not uniformly observed. In Bombay, it was said,¹⁴ they were trying to introduce the element of *joint responsibility*, and the Reserved Half was always amenable to the Transferred Half. The Punjab government speaks of *common decisions* arrived at in these joint meetings.

Finally we may note that these joint meetings were everywhere supplemented by informal consultations among members and ministers individually or in groups.

MADRAS, BENGAL, U.P. AND BIHAR

In Madras, Bengal, U.P. and Bihar, the system of working alternated between the system above discussed and the system of dyarchy as contemplated in the Devolution Rules. Thus in Madras in the years 1921 to 1924 the system more or

less approximated to the 'unitary' system sketched above. In the famous phraseology of the period, the ministerial and executive bodies worked as the members of a happy family. This is evidenced from the number of joint meetings and separate meetings of the Executive Council during the early years :—

	Joint meetings	Meetings of the Executive Council
1921	46	3
1922	46	2
1923	34	3
1924	17	3

It will be seen that joint meetings of the government were almost an invariable rule. This feature of the early administration of the reformed constitution was brought to the notice of the Government of India in a letter dated 28th July, 1924. The Government of the day pointed out that while no doubt the system resulted in securing a large measure of agreement, so far as it tended to impose joint responsibility for the decision of the Government, it was inconsistent with the scheme of dyarchy as contemplated in the Act and the Rules.

From 1925 separate meetings of the Executive Council were called more often—11, 21 and 19 in

1925, 1926 and 1927 respectively, indicating of course that questions affecting the reserved side were more often discussed by that side of government responsible for it. On the 24th of August, 1927 the Raja of Panagal said¹⁵ that the relations between the two sides of government were far from being harmonious : it was no more a 'happy home.' As another member of the Council put it,¹⁶ it was a question of individuals functioning each in his own way.

In Bengal, during the first year of the Reforms under Lord Ronaldshay, matters relating to the reserved subjects were ordinarily decided by the Governor in Council, while transferred subjects were the concern of the Governor and the ministers. Only cases substantially affecting both, in which differences of opinion had arisen, the apportionment of funds and projects of legislation were discussed in joint meeting. But from 1922, Lord Lytton, who succeeded Lord Ronaldshay, abandoned the system in favour of a more unitary one, and this continued till 1927. Separate meetings of the Executive Council became rare, and the decisions were recorded in the files as those of the joint meeting ; it was the proud boast of Lord Lytton¹⁷ that he and his cabinet had made as much progress as was possible to make towards a unified cabinet. In 1927, however, the older system was restored.

The experience of the U.P. Government more

closely resembles that of Madras in its attempt to begin with a unitary system, but a later abandonment in favour of a more strictly dyarchic system. The change was evidently due to the dissatisfaction with a 'unified' system ; as the Government put it, the ministers proved a handicap to the Governor in Council ; ministers would not publicly support the action of the Reserved Half, and the attempt to work the dyarchical system as a unitary one definitely failed. Sir William Marris, who became Governor in December, 1924, definitely rejected the experiment, and held joint meetings only in cases required by the Devolution Rules. He did not agree with the recommendation¹⁸ of the Reforms Enquiry Committee that joint deliberation between the two sides of the government on important questions should be definitely enjoined by rule ; indeed he felt so strongly in the matter that he intimated to the Government of India that, in so far as he had discretion, he would refuse to make such a rule as was proposed, and he asked that if it were proposed to constrain him to do so against his will, his protest might be communicated to the Secretary of State in Council. The ministers, too, were not quite happy under the system. They felt there was no reality about it, for decisions reached at meetings of the whole government were not carried out in all cases ; sometimes such decisions were modified or rescinded either by the Governor

in Council, or by the Governor alone without the knowledge of ministers ; they were taken into confidence and consulted only at certain stages.¹⁹

In these provinces, therefore, during the years when the dyarchic system proper was followed, an attempt was made to carry on the administration of the transferred departments in practical detachment from the reserved side of government as far as possible. Joint meetings were no doubt held, but they were comparatively fewer in number ; their scope was limited to discussing the subjects required by the Devolution Rules ; and, as a corollary, separate meetings of the Executive Council were held oftener to discuss the reserved subjects.

THE EXPERIENCE ANALYSED

The experience of these provinces, especially Madras and the United Provinces, which gave up, at any rate for a time, the attempts to work dyarchy in a unitary way is full of lessons to the student of political science, and coupled with that of other provinces provides fair material to form a judgment on the place of joint deliberation in a well-ordered scheme of dyarchy.

Why was the unitary experiment given up after a trial ? Most men are more utilitarian than they are prepared to grant ; they stick to a rule of conduct or an institution simply because it is useful to them. Joint deliberation is a means to an

end ; if it was given up, the obvious explanation is, it had been tried and, to the men who gave it up, served no purpose. There is a short but remarkable speech of the Raja of Panagal in the Madras Legislative Council²⁰ which is helpful in this direction. In seconding a vote of no-confidence against the ministry of the day, the ex-minister gave expression to his feelings, not of course suspecting that his words would have a reflection on his own previous conduct : “ The system of dyarchy is a delicate machine to be handled. It can only be managed under ideal conditions. In fact, we worked it under such conditions during the first three years of our ministry. *We had a clear majority in the Legislative Council*, and the relations between the two halves of the government were harmonious. After the expiry of the three years when the second council was formed, there was a change in conditions.

“ *Our majority went down to a mere working majority.* The relations between the two sides of the government were far from harmonious. The Cabinet was no more a ‘Happy Home’. Sir, it is enough to jeopardize dyarchy if one member on the Executive Council makes up his mind to undermine the strength of the ministry. The members on the reserved side are not responsible to the Council. *They have extensive patronage and official influence.* We then began to experience the

difficulty in working the dyarchic system of government."

Put in plain words, this means that the unitary experiment in Madras succeeded so long as the Reserved Half got the support of the ministerial party for getting their legislation and demands for grants passed in the Council ; the price for this support was to place at the disposal of the ministers for party purposes the patronage and official influence of the Reserved Half. When the ministry's majority in the second council diminished, the Reserved Half had no longer use for the uncertain support of ministerial groups ; no longer did the Reserved Half think it worth while to place unreservedly at the disposal of the ministry their patronage and official influence. After all, ' Executive Councillors are no less human than ministers and naturally they resented this depreciation of their stock in their own market '.

If it be asked why elsewhere the unitary system continued unbroken, the answer is contained in the experience of the Punjab and Bengal governments²¹. In the Punjab the mutual dependence of the Reserved Half and the Transferred Half on each other was so pronounced that joint deliberation on almost every issue was found essential. The official side, say²² the Punjab government in their memorandum, was never in a position to carry through the Legislative Council any essential mea-

sure without a large measure of support from those elements in the Council which were prepared to act on the advice of ministers ; equally the support of the official block was for ministers of considerable and, at times, even a decisive value. But mutual support necessitated previous discussion and a substantial measure of agreement as to the merits of the question at issue.

These then are the inner forces at work ; and they serve only to show that joint deliberation on *all* matters was partly at any rate a result of unholy alliance between the two sides of government, incidentally giving rise to a number of difficulties.

PITFALLS

While recognising that there is a case for joint deliberation, even in a strictly theoretical analysis, it will be seen that there are clear limitations to its usefulness. The caution given in the various documents cited, that when once opinions had been freely exchanged and the last word had been said, there ought to be no doubt whatever as to where the responsibility for the decision lay, was ignored. The Punjab government spoke of *joint* decisions and *unitary* government. In Bengal decisions were recorded on the files as those of the joint meeting ; and Lord Lytton spoke of his promoting joint responsibility ; the Madras Government also spoke of joint responsibility. One of their Secretariat

Instructions provided that when a decision affecting both reserved and transferred subjects was arrived at by the Governor in Council and by the Governor acting with the ministers, the fact should be clearly specified in the body of the order issued on the case. Clearly, association had been carried to the point at which responsibility began to be blurred.

That the blurring of responsibility had gone sufficiently far is clearly proved by an answer²³ given by Sir John Maynard, sometime member of the Punjab Executive Council, before the Reforms Enquiry Committee. Asked whether he considered himself constitutionally responsible for all the acts of his colleagues who were ministers, he felt obliged to say that he recognised his constitutional responsibility for any act of the government of which he had known and against which he had not protested—surely dyarchy was not tried in the way in which it was intended to be worked. The legitimate influence of the Transferred Half was converted into a control over the Reserved Half, the line between influence and control being hardly discernible. A ministry taking joint responsibility and normally supported by a large elected majority of the Council would thus be able not only to influence but in effect control. The vice versa is also possible ; here, one favourable circumstance is the strength of numbers. The Executive Council,

being larger in number than the ministers, may exercise a predominant voice over the transferred side : it is a cardinal principle in any deliberative body, big or small, that in addition to character and ability of particular individuals and their power for good or bad, the influence of the majority will inevitably, though unconsciously, tell. A Madras minister confessed as much.²⁴ A proposal made in the Bengal Legislative Council to reduce the number of ministers was negatived²⁵ partly because, if carried, it would reduce the influence of the ministry in the joint deliberations of government.

The greatest disadvantage of joint deliberation observed as a normal practice is that, under certain circumstances, it is likely to weaken the position of the ministers *vis-a-vis* the legislature, especially when their attitude towards reserved subjects is at variance with that of the Legislative Council. The members of the legislature have no access to the inner counsels of the Government ; indeed in the Madras Council a ruling²⁶ was given by the President prohibiting interpellations in regard to the relations between the two halves of Government. When they oppose the Reserved Half, and the ministers do not actively, by speech and vote, side them, they are apt to get the impression that the ministers take a different point of view from theirs. Ministers cannot of course disclose what takes place behind closed doors. The

Council challenges the ministers to declare what advice they gave to the Reserved Half in a particular matter in which they are keenly interested, e.g., the increase or the remission of land revenue. And when this happens repeatedly, the *bona fides* of the ministers is suspected, if not questioned.²⁷ It is often forgotten that the part played by reason, especially in times of stress, is inconceivably small ; sentiment is far more important ; it often shapes the conduct, at any rate, of men in the mass. In the stress of political fight, the nice distinction between unity in deliberation and duality in decision is all apt to be forgotten by a legislature eager to discredit the Reserved Half. Rightly or wrongly, when the ministers do not join the legislature in their opposition to the Reserved Half—and the atmosphere of joint deliberation precludes this possibility—the members of the legislature and the electorate are bound in the long run to look upon both halves of the government as in practice one, whereas the intention of the constitution is that they must learn responsibility in regard to one side of it. Briefly, it cloaks the true position of ministers as agents of the Council.

The best illustration of the tendency of the Council to treat ministers as soon as they accepted office as persons who had left their ranks and had become part of one executive government is supplied from that province where joint deliberation

was most consistently followed, *viz.*, Bombay. When it was proposed²⁸ to constitute an association of the elected members of the Bombay Council with a view to discuss the policy to be adopted on various questions coming before the Council from time to time, it was promptly decided that the ministers should not be admitted as members of that Association!

The public too received the impression that in all matters of policy of the reserved departments, the ministers were equally responsible with the Governor in Council, while of course the facts might be entirely otherwise. There was no guarantee that the ministers would be consulted, or that, if consulted, their opinion would be accepted on a question pertaining to those departments. This impression gained ground when the Governor said,²⁹ in his public speeches, government resolutions or addresses to the Council, that in important matters that aroused much public feeling action had been taken in consultation with, and with the support of, ministers.

Again, the value of joint discussion depends very much on the attitude with which the members on either side take part in it. If they meet round a table with the knowledge that they must agree to, and stand by, a common decision, then each will not only take a healthy interest in the discussion, but will be prepared to give way somewhat

and there will be a healthy give and take—in fact responsibility. Here by the very assumption, those who come in for joint deliberation are not bound to agree to a common decision. Each party comes in knowing that the discussion will not necessarily affect the final decision. It is not thus an organic association, and the decisions of government based on such association lack decisiveness, and are what Sir William Marris happily termed, 'twilight decisions'. On the reserved side this relationship results inevitably in a certain vacillation and lack of consistency. The policy which emerges from such deliberation is necessarily a policy of compromise and makeshift, of vacillation and weakness. Neither the ministers nor members of the Executive Council find it possible to adopt a bold and straightforward line of action for fear of offending their colleagues on the other side. As the Madras Government observes, more particularly in matters relating to the reserved side, the attempt to obtain by compromise a formula which would represent the views of both parts of the Government, more than once, led to the writing by the Governor in Council of letters to the Government of India, which could hardly be said to represent the real views of the Governor in Council; while, it may be imagined that, on their part, the ministers were not infrequently embarrassed in their relations with

their party and with the Legislative Council by the restrictions on their freedom of action, not merely by the *advice* of their colleagues on the 'reserved side' (which was all that the system contemplated), but by the attempt to arrive at and carry out the decisions of a joint government.

Again the interest of ministers and Members in matters not their own varies in direct proportion to the extent to which their views are accepted. When they are consulted but their advice is considerably rejected, they do not, naturally, feel much interest.

The habit of joint deliberation on all matters, once started, also comes to be regarded as a custom, departure from which is resented; but the continuance or the discontinuance of the practice is, by the constitution, left to the temperament of the head of the province. Was it not one of the complaints³⁰ before the Reforms Enquiry Committee by one of the ablest ministers under the dyarchic regime? This resentment was not only from the ministers; legislators themselves seemed to be so much accustomed to the practice of *their* ministers being consulted, that, when joint discussion was discontinued, they protested.³¹

Finally, a procedure, which contemplates associated deliberation as the normal course, inevitably causes delay in the despatch of business.

THE CASE FOR JOINT DELIBERATION

It is true that a general habit of joint deliberation in all matters has advantages. The work of government by its very nature cannot be compartmentalised; differences which vitally touch the administration of one or the other side of government must be got over if government is to go on, and one of the best ways of ensuring it is to forestall differences by a frank joint discussion. It minimises the causes of friction; without such opportunities for associated deliberation, there would be nothing to mitigate the shock of the collisions when they occur.

The case for such deliberation from this point of view becomes clearer when it is remembered that the division of powers under the constitution of 1919 was far from scientific. A minister of development was not in charge of Forests, a minister of Agriculture, of Irrigation, and the one in charge of Industries, of Factories, all of them being reserved. Joint deliberation under such circumstances provides for a necessary co-ordination of policy.

Secondly, preserving the apparent unity of government is all to the good; it ensures that respect for government on which its strength depends. The spectacle of a government divided against itself brings government into contempt.

Thirdly, from the point of view of the further

development of the constitution, there is the important consideration, that as reserved subjects are to become transferred subjects one day, opportunities for influence and consultation on them will make the transition to full responsible government smooth.

And lastly, each side should have the chance of learning the other's point of view. Joint deliberation provides a sort of liaison between the administrative experience of the official half and the knowledge of the ministers regarding the wishes of the people ; the ministers may avail themselves of the former, and the Councillors of the latter. Incidentally, it also helps ministers to give advice to their party regarding voting on reserved subjects.

But in the light of the difficulties experienced, the conclusion is inevitable that in a dyarchic constitution, joint deliberation and 'presenting a united front' cannot be carried on very far without striking at its root principles. But, within limits, it is not only useful but essential. The interdependence of functions makes it necessary that certain types of cases must be discussed in joint council, *viz.*, when the right of jurisdiction, whether a subject belongs to the reserved side or the transferred side, is not clear, and the Governor before giving a decision may submit it to the joint deliberation ; when a matter appears to the Governor to affect substantially the administration both

of a reserved and a transferred subject ; when differences of opinion have arisen between the two halves. In these a consultation between the two halves of the Government will be mainly directed to helping the half which is seized of the immediate issue to arrive at a wise conclusion, with a knowledge of the feelings of the other half on the subject. Such deliberation either avoids friction or removes it ; and thereby promotes efficiency. In reserved matters, which only in a remote way touch transferred departments, the more the Reserved Half are left to themselves, the better, and vice versa ; the permanent heads of departments may be expected to supply the official administrative experience which the ministers may require.

And one last point. When such consultation takes place, either half must be taken into confidence at all stages of the case ; and any working arrangement agreed upon ought not to be modified or rescinded by either half without the knowledge of the other, or preferably without an opportunity provided for the reconsideration of the issue in the light of altered circumstances, if any.

III

IN THE LEGISLATURE

The Joint Select Committee laid down that in the debates of the Legislative Council, members of

the Executive Council should not be required to support either by speech or vote proposals of ministers of which they did not approve, nor should ministers be required to support by speech or vote proposals of the Executive Council of which they did not approve ; they should be free to speak and vote for each other's proposals, when they were in agreement with them.

The working of the constitution during the last fifteen years shows that in general ministers and Executive Councillors did not oppose each other by speech or vote. Exceptions there were, but neither numerous nor important. One may, however, be cited. In the United Provinces Legislative Council, in an amendment on a Bill relating to local self-government on November 6, 1922, members of the Executive Council spoke and voted against a minister ; it may be said, however, in fairness that they did so³² because the minister in charge of the Bill had said that he did not regard the amendment as vital to the Bill, and that he would be guided by the decision of the House.

But a more useful question to ask is : did Members and ministers make use of their freedom to remain neutral ? Occasionally they did ; in the Punjab³³, the Revenue member, for example, abstained from voting for the Sikh Shrine Bill introduced by the minister for Education ; similarly ministers too sometimes³⁴ exercised their freedom

to remain neutral.

But more usually, however, on account of the need for mutual support, the tendency was for the Executive Councillors to vote with the ministers, and vice versa. Strictly speaking, this must be taken to imply either that there was general mutual agreement, or that they preferred to use their freedom of vote in mutual support, though there were differences of opinion. The former we have no data to judge ; but that circumstances favoured the latter tendency, none can deny.

The need for mutual support arose partly on account of local influences, but partly on account of causes inherent in the system. Under a strict dyarchy, if the Reserved Half failed to support the ministerial half,—and the vice versa is also true—would it not have the effect of isolating the Reserved Half and crippling its powers, unless, of course, it was prepared to have constant recourse to its extraordinary powers ? It felt therefore bound normally to try and win the support of the ministerial group, and as a first attempt, the convention grew of the Councillors going into the same lobby as the ministers.

But what about the ministers ? It is clear that if the ministers in every Council could count upon the support of an organized party, they could afford to remain neutral and independent of the Reserved Half. But, as detailed later,³⁵ this was the excep-

tion rather than the rule. Indeed we have clear evidence that in many divisions,³⁶ ministers would have sustained defeat but for the support of the Executive Council and the nominated block. The support of the Executive Councillors meant for the ministers not only their individual votes, but also, in practice, those of the official and nominated block. The need for their support was sufficiently strong to draw the ministers into the arms of the Reserved Half. Again, we have it on good authority that, for other reasons also, the ministers felt the necessity of keeping up friendly relations with the Reserved Half: their displeasure might not only bring about the fall of the ministry as indicated above; but the ministers had need of the patronage and official influence of the Reserved Half to keep their followers together³⁷. It is therefore not necessary in order to understand the situation to make much of the statement³⁸ that Governors invariably asked ministers to vote on the reserved side; under the circumstances, ministers had every inducement to support the Councillors.

The result was that in many cases the ministers were successful in securing for the Reserved Half of government the support of their adherents, so that, while there were ministers, the reserved business could be carried on without recourse to the governor's special powers³⁹. In return minis-

ters were able to rely on the votes of the official block for the support of their own policy. This, however, had the result that the Legislative Council failed to realize the change made by the Reforms ; they identified ministers as part of the old bureaucratic form of government.

The ministers' position in the legislature *vis-a-vis* the Reserved Half, however, on account of these circumstances created an anomaly, which cannot be lightly passed over. We may discuss this under two separate heads, first where the ministers agreed with the policy of the Reserved Half, and then where they did not.

WHERE MINISTERS AGREE WITH THE RESERVED HALF

In the first case, if the ministers spoke and voted in favour of the policy of the Reserved Half, and if the Legislative Council, by a majority, was in general sympathy with them, there would be no constitutional difficulty. But there are other possibilities.

The ministers might agree, but the Legislative Council might vote against the proposal. In strict constitutional theory, no difficulty should arise, because in reserved subjects ministers were given freedom of vote when they agreed with the policy of the Reserved Half. But in practice difficulties were bound to arise mainly because of the uncertain attitude of the Legislative Council. That

Council, rightly or wrongly, expected the ministers as popularly elected representatives to vote with them on every issue which came up before the Council, whether reserved or transferred: the ministers were *their* representatives in the Cabinet. The instrument of Instructions, it would appear, encouraged such an expectation. In asking the Governor to encourage joint deliberation between the ministers and Executive Councillors, it expected ministers to place at the disposal of Executive Councillors their knowledge as to the wishes of the people. Their affinities, even in spite of them, were with the elected Councillors. As one member of a Legislative Council said,⁴⁰ "In regard to reserved subjects our ministers should be in the position of an ordinary member of the Council and they should take the lead in opposing government". And it must be remembered that ministers were responsible to the Council, not of course for the administration of reserved subjects, but the legislature's confidence in the ministers was not, in practice, entirely, the result of their administration of transferred subjects. Their attitude towards the reserved subjects counted. Instances⁴¹ are on record where members of the Legislative Council moved an adjournment of the House by way of censure on ministers for their action in voting against the majority of the Council on a proposal relating to the reserved subjects.

To avoid such a contingency, ministers might take the line of least resistance and openly dissociate themselves from the policy of the Reserved Half, approval of which was likely to involve them in difficulties with the legislature. This, in fact, is the experience recorded⁴² by the United Provinces Government. But this attitude raised difficulties in its turn ; for, by assumption, here was a matter in which ministers personally agreed with the views of the Reserved Half, and under conditions of joint deliberation, might have, not perhaps correctly interpreting the attitude of the legislature, given their approval to the policy in the Cabinet discussions. To go against their opinions expressed in Cabinet discussions would be not only immoral ; it would lead to mutual suspicion and an estrangement of friendly relations with the Reserved Half and the Civil service which they could ill afford.

To remain neutral in the Legislative Council was a third alternative. But this hardly improved their position ; indeed it might prove worse, because it was likely to displease both their colleagues on the reserved side as well as the Legislative Council. For practical purposes, in the eyes of the Reserved Half, their remaining neutral was as good as giving an indication to the Legislative Council that they were not in sympathy with the proposal. There is clear evidence to show that when

a minister abstained from voting, and the issue was one of importance, such abstention was naturally taken to mean opposition. Thus a member⁴³ stated: "Even when the present Bill is being discussed there have been serious differences of opinion between the two halves of the government, so far as we see from the fact that ministers have not voted on many occasions with the Government". On the other hand, the Council might be impatient and wish that the ministers in such a case should actually vote with them, bowing to the wishes of the Council.

IF MINISTERS DISAGREE WITH THE RESERVED HALF

The other possibility is that the ministers themselves might be opposed to the policy of the Reserved Half. The only constitutional course they could adopt in such a case, according to the dictum of the Joint Select Committee, was to remain neutral. But, as already indicated, abstention from voting would only make them unpopular with the Council. That Council was apt to forget the delicate position in which ministers were placed, and to censure them for not taking what they considered to be the popular view. It is possible,⁴⁴ however, that the ministers, while themselves not taking sides, might encourage their followers to vote against the Reserved Half.

The difficult position of the ministers is well

illustrated by the history of the Madras Council. Here the spectacle was witnessed of ministers voting with the Executive Councillors, while their followers voted against them as in the case of the resolution⁴⁵ on the Permanent Revenue Settlement. In this their party was victorious, although the ministers voted against them. Again, ministerialists were defeated but the ministers were with the winners as in the case of the resolution⁴⁶ on the Staff Selection Board.

Finally, the experience of provincial governments suggests one conclusion of great importance in estimating the value of dyarchy as a political experiment. When ministers command a stable majority in the legislature, a condition sometimes attained, they can use that position for influencing the Reserved Half. It may even be said that the ministers' attitude in such a case becomes the determining factor in the government of the reserved side, for it cannot too often be stressed that the Reserved Half always try to govern without resort to their special powers. A ministry with a stable majority to support them can take up a determined attitude, and either compel the Reserved Half to accede to their wishes or to use their special powers. We have it⁴⁷ from the governor of Madras that his government introduced an Irrigation Bill in the Council in spite of the warning of ministers ; the result was disastrous ; the Bill was defeated in

the Council on its first reading. The Government quietly acquiesced in the decision of the Council, and the Law Member, who was in charge of the Bill, resigned.

Paradoxical as it may appear, it is also true the stronger a ministry is in relation to their Council, the more embarrassing is their position in relation to the Reserved Half, for they have to take care not to estrange their followers ; at the same time they expect them to influence the Reserved Half in the direction of their sympathies, to which the Reserved Half may not always be willing. If the legislature is not satisfied with the attitude of the ministers, it is in a position to make things extremely uncomfortable for them.

To conclude : it is a serious inherent defect of the dyarchic system—the weakening of the ministers *vis-a-vis* the legislature by reason of their connexion with the Reserved Half.

CHAPTER VI

FINANCE UNDER DYARCHY

I

JOINT PURSE *vs.* SEPARATE PURSE

The finance of a country is not only the fuel of the whole administrative machine ; it is a symptom and a gauge of the quality of its government. Where, as in dyarchy, 'two governments within one' have to apportion the available revenue, the danger exists that either may not be adequately provided for ; and rules must obviously be prescribed to ensure the efficient and harmonious working of both.

EARLY PROPOSALS

When the Reforms were being discussed there was some controversy about the respective merits of the 'separate purse' and the 'joint purse'. The proposals¹ of the Montagu-Chelmsford Report were that the provincial revenues should be regarded as a whole, the revenue from reserved and transferred subjects alike being thrown into a common pool, from which the two halves of the government were to draw the funds for their respective requirements. The amount which each might draw was to be settled yearly at budget time, after consultation be-

tween the Executive Council and the ministers. The principle of division was that the reserved subjects of expenditure were to be first given the supply which they needed, after allowing for any contribution due to the Government of India, and the transferred subjects were to receive what remained in the pool. Ministers were, however, to be allowed to supplement it by taxation ; indeed the initiative in taxation was to be given to ministers alone.

THE SCHEME FOR A SEPARATE PURSE

The Government of India found grave practical difficulties in these proposals, and in their *First Despatch* advocated a system of separate purse. Its essential ideas are two : first, the allocation of specific sources of revenue—that each half of the government should enjoy the proceeds of the revenues of the departments which it administered. Ministers would have, without interference or reservation, the full revenue from their own earnings departments, and would be able to count upon it in preparing their scheme of expenditure ; the Governor in Council would be exactly in the same position. Secondly, an estimate of the normal expenditure, and, therefore, of the amount of normal revenue which each half of the Government would require for the proper conduct of its administration was to be prepared. If, in the Transferred Half, the revenue estimated to be necessary could not in nor-

mal circumstances be obtained from their earning departments, the difference should be made good to them by an assignment from the revenue of the reserved departments ; if, on the other hand, the receipts of the official half of the government would not normally equal the revenue estimated to be necessary, an assignment would be made to them from the transferred departments. This assignment might take the form of a definite fraction of some growing revenue, or a lump subsidy, in either case to hold good for a definite and agreed period, say, seven years.

ITS ADVANTAGES

The scheme rightly claimed the advantage that it would place upon both halves of the government an interest in developing their own sources of revenue, not likely under the joint purse arrangement. This stimulus, apart from careful assessment and collection, seeing each one got his full value, would arise from the power for further taxation. It would allow each half of the Government to forecast its expenditure with a sure knowledge of the revenue which would be available to cover it, and hence would allow it to lay out its financial policy with a confidence which would be lacking under the joint purse system. This would be particularly true of schemes which involved a recurring expenditure, or where expenditure was spread over a period, before the undertaking could be comple-

ted. If there was a joint purse, the Finance department would not know beyond the year in which it was actually working what amount of revenues was going to be at the disposal of the Governor in Council or of ministers respectively, and consequently it would not be in a position to advise either as to the acceptance of projects of continuous and expanding expenditure. The separate purse would reduce the opportunity for meddling and friction inherent in a joint budget; as Meston put it,² it 'would avoid an annual wrangle of the two halves of the government over their budget, two dippers plunging into this pool and clashing with each other.' It was agreed that friction could not completely be avoided when two sides were struggling for resources out of a common reservoir; but, it was argued that under the separate purse the friction might occur only at the time of settlement, and in its effect it was not likely to be so serious as the annual friction which would occur over the distribution at each budget season under the joint purse system. Again under the separate purse system, the tendency for each half to meddle with the business of the other would be considerably less; under the joint purse system, a member of the Reserved Half, for instance, might consider himself justified in protesting against a particular order issued in the Excise minister's department

on the plea that it would considerably affect the common finances, threatening to take it to the Governor and demanding a meeting of the full government to consider it, and urging his colleague to modify the details of his policy. When the revenue available for each half of the Government for a term of years was fixed, as it would be under the separate purse, such meddlesomeness must be rare.

In the result, the separate purse would give each half of the government a clearer field of responsibility and work ; in fact the Government of India considered that a dualised system, involving, as it did, the responsibility of two separate governments in the same area inevitably necessitated the control by each of these governments over its own finances, and they found it extremely difficult to picture a dualised system working with a unitary purse. Finance and administration are interdependent and inseparable. Neither the ministers nor the Executive Council could be said to be responsible for the development of the services under their charge unless they had complete financial responsibility for the administration of these services and for any improvements or alterations which they proposed to make in the working of these services. Dyarchy was admittedly a transitional form of government, and, at the end of a specified period, a commission was expected to review its working and suggest the transfer of other subjects to popular

control. That transfer must depend on the finding as to how those on whom power had been devolved had used it. The separate purse would bring the results much more fairly before all parties, before the tax-payer and before the representatives in the Council: "If", they said, "we start with a certain balance and certain sources of revenue, with certain items of expenditure", and if, after so many years of working their own items separately, they had their separate balance sheets, they ought to show that they had achieved certain results at such and such a cost.

A VARIANT

. A somewhat different system³ of separate purse was put forward before the Joint Select Committee by Lionel Curtis. Its essential difference from the Government of India scheme was that, instead of the allocation of specific sources of revenue to each half, it would imply only a fractional allocation of the total revenue, without separating the sources thereof. Thus if we take the whole of the revenues of a province to be X, $\frac{2}{3}$ of that might be set apart for the reserved departments and $\frac{1}{3}$ for the transferred; the particular proportion might be fixed after taking the average of the expenditure in the two kinds of services for a period of years, say three, previous to the date of fixing up. It is sufficient to say that this

fractional system, as it may be called, while certainly preferable to the joint purse, would not be quite so good as the division of the sources of revenue ; for, the allocation of sources of revenue would confer a feeling of much greater responsibility on those who had to undertake the task of assessing and collecting those revenues.

CRITICS

It is not surprising that the scheme for a separate purse was vehemently criticized, because it was unorthodox finance ; the wonder is that the bulk of the criticisms came from the Indian politicians themselves. It was urged that the scheme was against accepted methods of financial administration, it being considered wrong in principle to separate off the funds of a province into two distinct portions, and to budget in advance for a long period—it was impossible to foresee the contingencies which might occur ; it was tacitly forgotten that a novel form of government might require a novel system of finance as well. It was urged that the separate purse might stereotype the position of particular departments ; that friction could not in any case be avoided ; it was even said⁴ by Sir Frank Sly, a distinguished civil servant, that it would lead to even greater friction than the joint purse—only the friction would be reflected in the Legislative Council with increasing force on the ground that

the allotment was not fair to the transferred subjects. The fact that each settlement was made binding for a series of years would not prevent its being constantly attacked, if it was thought to lead to the undue endowment of reserved subjects at the necessary cost of the transferred. There might be very much more difficulty if the minister had to come and ask for taxation for the transferred subjects, while perhaps the reserved portion of the government were basking in a surplus. If a member of the Executive Council similarly went before the House with a proposal for taxation, he might be met by the answer: "We are not going to pass that taxation, because we have absolutely no voice in what you call reserved departments—in departments over which we have no control and in respect of which extravagant expenditure, we think, is going on. Unless we have a voice in controlling that expenditure, we are not going to listen to your demand for taxation." From the taxpayer's point of view it was desirable that there should be a single authority who should raise the taxes for provincial purposes. Otherwise taxation might be resorted to, though there was a surplus in one of the two halves of government.

Again, the separate purse would, it was feared, introduce an undue separation between the two parts of the government, undesirable because the system of dyarchy was after all only a temporary

expedient; ultimately, all subjects must be transferred. It was, therefore, desirable that the two divisions of the government should, during the transitional period, understand each other's difficulties and points of view. The separate purse might delay the fusion of the two wings of government. The most important objection, from the Indian point of view, would appear to be that the separate purse would deprive the popular element of a real voice in the reserved side of government, which, under the joint purse, they hoped to have. The consequences of a joint purse would be that into the hands of the popular half of the Government, there would be placed, through their handling of the purse-strings, a very large measure of control over the policy in regard to subjects which were not under their administrative control and for which they were not responsible. In a memorandum⁵ signed by some distinguished men, this point of view is clearly indicated: "the ministers will naturally, in their own interests, exercise a jealous and vigilant control over the expenditure on reserved subjects in order that the transferred subjects may get as large an allotment as possible."

The separate purse was more costly, not only in the sense that if they had fixed revenues, they would be inclined to spend up to them instead of economising; "the result of having a separate

purse," a financial expert has said,⁶ "would be that you would have to take some 60 lakhs in ten years more out of the pockets of the tax-payer merely to keep the purses separate. You are bound to have an adequate balance in both, and to do that you would have to take 60 lakhs of additional taxation out of the tax-payer merely to do that and for no other reason whatever. We have to maintain an adequate balance in any budget. It will be an increased administrative charge merely maintained so as to have your reserve."

Finally, the whole idea of a separate purse seemed to many to be based on the untenable proposition that the two halves would always otherwise be at one another's throats. The members of the bureaucratic wing of the government were also interested in education, sanitation and other nation-building departments, and would be very glad to promote them ; the ministers similarly were interested in maintaining law and order, and developing irrigation.

A JOINT PURSE ADVOCATED

For these reasons the separate purse was strongly criticized ; and, in its stead, the joint purse was advocated. Under it, as already indicated, the provincial exchequer would be a reservoir into which flowed all the revenue collected by both halves of the government ; there would be no pres-

cription of the quota which each should provide. It would also be the reservoir from which both halves of the government would draw for the charges of their administration, but there would be no limitation on the share which either could extract. It was urged that it would lessen friction ; it would closely associate the two wings of the government and permit ministers to put forward objections to any proposed increased allotment for reserved heads in view of the claims of the transferred, while, on the other hand, ministers would get an opportunity for appreciating the necessities of the reserved subjects. Knowing their difficulties, they would be in a better position to advise the Legislative Council to pass the supplies as regards these departments. The knowledge that ministers with their responsibility for the transferred departments had also been a party to the allotments made for reserved subjects was calculated to induce in the Legislative Council a conviction of the necessity of these allotments and to minimize the chances of their seeking to cut them down, and incidentally there would be less opportunity for resort to the power of certification. The financial dispositions of each year could be made with reference to the particular requirements of that year ; there would be a much-needed and most useful element of elasticity imported to the financial arrangements, and when a proposal of new

taxation was made in those circumstances, the Legislative Council would more easily persuade itself to accept it and support the Government than it could be expected to do otherwise. Wisdom lay not in equipping each of the different elements with a complete and separate paraphernalia of its own, and trusting to their orbits lying sufficiently apart for collisions to be avoided, but in taking every opportunity of bringing the two elements into contact so as to induce the habit of joint action; it would be an element contributing to the unity of action and feeling in the government.

JOINT SELECT COMMITTEE'S DECISION

The Joint Select Committee, who considered the Government of India Bill, did not endorse the suggestion for the allocation of separate sources of revenue to each half of the government but thought that normally a joint budget was preferable. They were confident that the difficulties inherent in the joint purse could readily be solved by the simple process of reasonable give-and-take and common-sense; but they advised that if the Governor, in the course of preparing either his first or any subsequent Budget, found that there was likely to be a serious or protracted difference of opinion between the Executive Council and ministers on the subject, he should be empowered at once to make an allocation of the revenue and

balances. But the allocation was not to be of the sources of revenue, but of a definite proportion of the total revenue, say, by way of illustration, two-thirds to reserved and one-third to transferred subjects, and similarly a proportion, though not necessarily the same fraction, of the balances. If he desired an assistance in making the allocation, he might be allowed to refer the question to an independent authority appointed by the Governor-General.

Parliament accepted this recommendation.

II

FINANCIAL ARRANGEMENTS

The rules framed under the Act provided that the framing of proposals for the apportionment of funds between reserved and transferred departments respectively would be a matter for agreement between the two parts of the government responsible for them. If such agreement was not forthcoming, the Governor was to allocate the revenue and balances of the province between reserved and transferred subjects by specifying the fractional proportions of the revenues and balances which should be assigned to each class of subjects. Such an order of allocation might be made by the Governor either in accordance with his own discretion or in accordance with

the report of an authority to be appointed by the Governor-General on the application of the Governor. In either case the order was not to remain in force for more than one year. If in the meanwhile an agreement was arrived at between the two sides of government, the Governor could also cancel the order of allocation, provided of course that, where the allocation had been made in accordance with the report of an authority appointed by the Governor-General, the Governor-General's consent had to be obtained before revoking the same. In the almost impossible contingency, where neither agreement had been reached nor an order of allocation had been made, the budget was to be prepared on the basis of the aggregate grants respectively provided for the reserved and transferred subjects in the budget of the year about to expire.

Proposals for raising taxation or for the borrowing of money on the revenues of a province were to be considered by the Governor with his Executive Council and ministers sitting together, but the decision was thereafter, according to the principle of dyarchy, to be arrived at by the Governor in Council, or by the Governor and ministers according as the proposal originated with the Governor in Council or the Governor and ministers.

THE FINANCE DEPARTMENT: ITS CONSTITUTIONAL POSITION

To ensure that the collection and spending of public revenue was done according to accepted canons of financial probity, and, in general, to co-ordinate various aspects of financial administration, a Finance department was set up in each province. In view of the fact that lots of complaints about the working of this department in relation to transferred subjects were heard in the debates in several Legislative Councils and in the memoranda before the Reforms Enquiry Committee, a careful understanding of the constitutional position of the department is necessary if we are to understand properly its place in the working of dyarchy.

The fact must be firmly grasped that the institution of the Finance department in the provinces was a direct consequence of the relaxation of the Government of India's control over provincial finances which followed the Reforms. Before the Reforms, the Government of India exercised stringent and meticulous control over provincial finances. The budget estimates of the provincial governments had to be submitted to that Government for sanction and a number of other rules of budget procedure had to be observed. Further the provincial government could not impose any additional taxation or make any change in the existing system

of revenue management nor could they reduce or give up any source of revenue. They had no power to borrow money, nor had they any control over their balances. There were, besides, stringent restrictions placed on the provincial governments' powers of expenditure by various codes and standing orders. A substantial relaxation of external control over finance implied the substitution of effective control within the province, and we may note that such control is exercised in every government by the Treasury or similar departments.

Briefly stated, the function of the Finance department was to be the watch-dog of the Government as a whole, of the Council and of the people in the interests of economy and financial efficiency. This was performed through its control over the preparation of the budget, over expenditure, over revenue, loans and other financial matters. In connexion with the budget, it was the duty of the department to prepare a statement of estimated revenue and expenditure to be laid before the Legislative Council ; for the purpose of such preparation it could ask the departments concerned for material on which to base its estimates. It examined and advised on all new schemes of expenditure, and could refuse to provide for any scheme which had not been so examined. It follows that all new proposals for expenditure had to be previously referred to it before they could be included in the bud-

get. When such a proposal came before the Finance department, its duty was to see that the scheme was based on sound financial principles and that it was in accord with recognised canons of expenditure of public money, and to ensure that the scheme was not extravagant or wasteful. It might, for example, suggest that the scheme that was put forward could be carried out at a cheaper cost in a better way. Besides, it had to ensure co-ordination in the matter of salaries, and to see that the proper sanction, *e.g.*, of the Secretary of State for certain schemes required by the Devolution Rules, was obtained. All these, it may be remembered, were a preliminary to budget sanction.

After grants had been voted by the Legislative Council, in the expenditure of money, it had some powers of control. Thus no administrative department could add or reduce any post in the public services of the province without the previous sanction of the Finance department ; its sanction was also required for varying the emoluments of any post. These rules were based on the idea that no department should be able to increase the posts under it to an extravagant extent. There are, it has rightly been said, few greater dangers to a country than the unchallenged growth of the number of functionaries. In particular, there are few points on which an executive based on a popular assembly

is more vulnerable than when it is pressed to add to the list of appointments paid from the public exchequer. Again, the departments' advice was sought as regards sanctioning grants-in-aid to local bodies. When such grants-in-aid were fixed by any department, the Finance department had to see that they were not excessive. It had also power to sanction any reappropriation within a grant from one major, minor or subordinate head to another. Reappropriation means the transfer of funds from one unit of appropriation to another such unit. The importance of this power of the department can be realized when we know that the Member or minister in charge of a department could sanction reappropriation within a grant only between heads subordinate to a minor head, and which did not involve undertaking a recurring liability. Finally, to regulate expenditure, it was the duty of the Finance department to frame proper rules for the guidance of other departments and establishments subordinate to them, and to see that proper accounts were kept by them.

Its other functions included those of examining and reporting on all proposals for the increase or reduction of taxation, provincial and local, managing loan transactions and the Famine Insurance Fund, enforcing retrenchment in public administration, and generally of keeping in touch with any circumstances likely to affect the financial position

of government. All these, in fact, proceeded from its main function of being responsible for the finances of the government.

The effect of these rules was to give that department a most responsible position as the custodian of the provincial finances. But the position given to it, it must be stressed, was not, except to a very limited extent, that of an over-riding authority. A careful examination of the rules shows that only in one respect did it have such over-riding power, viz., to decline to provide in the Estimates for any schemes of new expenditure, which had not been examined by it; in effect this could only mean that the administrative departments had to send in their schemes in good time to be examined by the Finance department, or, in the alternative, to wait for the scheme to be included in a later year's budget. The Government of India in their memorandum supplied to the Feetham Committee succinctly summed up the position of the department thus :

“The function of the Finance department, in truth, is not an over-riding power. It is not a body that either dictates or vetoes policy. It watches and advises on the financial provisions which are needed to give effect to policy. It criticizes proposals and can ask for further consideration. It points out defects in methods of assessment and collection; it can demand justification for new expenditure ;

it can challenge the necessity for spending so much money to secure a given object. But in the last resort administrative considerations must prevail." If there was a dispute regarding expenditure on a reserved subject, the finance member might urge that it was wrong or wasteful or that it would entail fresh taxation. But he could be over-ruled by the Governor in Council. If the dispute related to expenditure on a transferred subject, the Finance department might similarly expostulate. But the minister in charge of the particular subject could over-rule it and its objections, taking the full responsibility for so doing. In England, he would, in theory, have to get the Cabinet to endorse his view in such a case ; in the provinces, here, he would need only the concurrence of the Governor. The only thing that the Finance department could insist upon was to ask that the proceedings and notes including the Finance department's note on the point at dispute should be placed before the Governor. The Finance department was in fact in the nature of an expert body who was to watch the state of provincial finance and to ensure its solvency, economy and integrity ; its functions, if properly administered, were considered⁷ to bear some analogy to those of the judiciary. It was, as the Madras Government pointed out in an order issued in January 1927, an adviser and in no sense a controller of the administrative departments. It could

only advise ; it could not insist upon its advice being taken.

AN IMPORTANT CONSIDERATION

We have yet to mention one factor of some constitutional significance, *viz.*, that the Finance department which no doubt performed identical functions in regard to the reserved as well as the transferred sides of government was itself part of the Reserved Half. It was specifically provided in the rules⁸ that the Finance department was to be controlled by a member of the Executive Council, with a financial secretary, immediately subordinate to the member. We have it on high authority⁹ that the suggestion was at one stage considered of placing the finance portfolio under a minister—only, however, to be given up. It was apparently found that there were insuperable constitutional difficulties in placing that department under a minister. To take one instance. The Finance department had to administer the various treasuries throughout the provinces. The treasuries were bound by the Treasury Orders issued under the rules. These treasury orders granted considerable powers to the Government of India and the Controller of Currency, and it was regarded as unconstitutional to place the minister in relation to some of his duties in direct subordination to an authority in India itself. That was one difficulty.

The same point arose in respect of the Famine Insurance Fund. Famine was a reserved subject ; it was obviously difficult to place the financial administration of the Fund under a minister. The suggestion was then made that the finance portfolio might be entrusted to the Governor. It was at once realized that the idea was impracticable ; the Governor could not, with all his numerous other duties, undertake that very great responsibility. Besides, the Finance department, more than any other department of government, needed a trained administrator at its head ; it was recognized that many of the Governors were not trained administrators ; in fact, they were not sent here as such.

Other suggestions too were considered. Thus it was suggested¹⁰ that there should be a Financial Commissioner, neither a Member nor a minister. It was felt that his opinion would not under the circumstances carry the same weight, if he was not a member of the Government. Again the idea was suggested that in order to mark the relations of the Finance department with both parts of the government, it should be placed under a sort of Treasury Board consisting of one Member of Council and one minister. This idea too was dismissed as impracticable : it would lead to delays, divided decisions and unnecessary opportunities for friction. Economy, convenience and the fact that the bulk of the

revenue would fall to be spent by the reserved side decided the issue in favour of an Executive Councillor.

III

THE PRACTICE

Did these arrangements sketched above work well in furtherance of the efficient and smooth working of the financial machinery? Two specific issues have to be discussed in attempting an answer to this question—the working of the joint budget, and ministers' relations with the Finance department.

THE WORKING OF THE JOINT BUDGET

The procedure in the matter of allocation was not quite the same in all provinces, though in essential principles there was not much of difference. In general, during the year, all departments, reserved and transferred alike, sent to the Finance department from time to time proposals for new expenditure which they would like to see included in the next budget. Those which were examined and considered desirable on their merits were placed in a list of new expenditure. From time to time these proposals also went before the finance committee of the Legislative Council, who expressed their opinion upon them. If they objected to any proposal,

it was usually cut out of the schedule. Then the budget was prepared for the sanctioned expenditure and sent to the finance member. The finance member decided how much money he could spare for additional expenditure. Then there was a meeting of the whole government at which the budget was considered and at which it was decided by agreement—naturally after a certain amount of discussion—how much money should be allotted for new expenditure and, of that amount, how much was to be allotted for transferred and reserved departments respectively.

It would appear that in some provinces there was an informal meeting of the secretaries of the departments under the chairmanship of the finance Secretary to have a preliminary discussion and adjust the demand to available revenue.

As originally framed, the rules only laid down that the framing of proposals at the time of the preparation of the budget must be a matter for agreement between the two halves of government ; provision for such agreement was not made for any money which came in during the year. On the recommendation of the Reforms Enquiry Committee the rule was amended so as to cover allocation, not only for the original budget but the division of windfalls during the year.

It is undoubtedly a gratifying circumstance, as Layton has put it, that in spite of the financial strin-

gency through which the provinces passed and the natural anxiety of ministers to secure the largest possible grants for the beneficent departments, there was no occasion in any province for the Governor to resort to the power which he had in reserve of ordering the allocation of available funds at his discretion. Without exception, the two sides of government were able to reach an agreement as to the allocation of funds. This indicates that there was on both sides a reasonable sense of give and take. When the revenues were falling short, members of the Executive Council have been known¹¹ to agree to the bulk of the retrenchment being effected in respect of reserved subjects, and to agree that the transferred departments should have the first claim to the restoration of the retrenchments in question in the event of funds becoming available. Ministers themselves have acknowledged¹² the co-operation they had received from members of the Executive Council. "It is only fair to say", said the minister for Local Self-Government in Assam in 1926, "that every Member of the Government is willing to give as much money as possible to the transferred departments."

DIFFICULTIES EXPERIENCED

But it was by no means always easy to arrive at decisions in regard to budget allo-

cations. While ministers, indeed, loyally accepted the decisions arrived at, and did their best to induce their supporters in the Council to do likewise, at least one provincial government has recorded¹³ that there had, not unnaturally, been left in their minds and in the minds of many Members of the Legislative Council a feeling of helplessness and consequent irritation. Ex-ministers admitted¹⁴ before the Reforms Enquiry Committee that in the allocation of funds there was a good deal of trouble, and that, at the joint meetings when the Budget was settled, the ministers always carried away an unpleasant feeling that it was impossible to assess the comparative value of the numerous projects of the different departments on the reserved side, competing for allotments. The ministers felt that they had to explain their policy to the Government as a whole, and in effect to get it approved by them, to persuade the other members of government to get the allotments they considered necessary—always a difficult job, and not in keeping with the strict theory of dyarchy.

It was only natural that in such circumstances men from whom much was expected by their supporters should have no difficulty in persuading themselves or their following that, if only they had full control of finance in their particular sphere, all would be well. Instances are on record¹⁵ where Legislative Councils, after some experience of the

joint budget, recommended to the government that a definite percentage of the total revenue of the province might be allotted for being spent by the transferred departments. "We should know," said a member, "what we can expect for purposes of sanitation, agriculture, education . . . then only can we proceed smoothly and we can be of some use to the public. We have to grope in the dark in discovering the principle on which the ratio of expenditure between the transferred and reserved departments is fixed."

Complaints¹⁶ that the reserved departments were being unduly favoured and the transferred starved were almost a recurring feature in the debates of every Legislative Council. It must be admitted that there was not much substance in the criticism. Provincial governments in their memoranda have indeed convincingly shown that this complaint was simply not true. Of course, the reserved departments were allotted a larger share than the transferred; but it is unfair to judge with reference to the percentage of the total allotted—that depended on the number, and the nature of the departments reserved, and the share of the total revenue they absorbed in the pre-reform period. A fairer criterion from which we may judge is the increase or decrease in the share of the total revenue to the reserved and transferred services after the Reforms were introduced. If this

is accepted as fair, it is seen that in Madras¹⁷ expenditure in the reserved departments fell from 68 per cent. of the total revenue in 1921-22 to 58 per cent. in 1928-29, while in the transferred departments it rose from 32 to 42 per cent. The Central Provinces figures tell¹⁸ the same tale. Bihar records¹⁹ that 90 per cent. of the new recurring expenditure and 72 per cent. of the new non-recurring expenditure were incurred in the transferred departments. The fact, however, that the complaints were given expression to in these provinces is yet important because they shaped the relation between the Executive Council and the Legislative Council, whose co-operation the Executive Council would normally like to have ; the Council's assent to new taxation could in most cases be obtained²⁰ only by the Government promising to utilize the proceeds thereof for the transferred departments, though there was no guarantee that all the proceeds would be so utilized. Indeed, the ministers' ability to raise taxes would appear to have been fettered by the Council's suspicion that the proceeds of the taxes might be spent on reserved subjects.

MINISTERS' RELATIONS WITH THE FINANCE DEPARTMENT

We have seen that a joint Finance department was part of the financial arrangements connected with the joint purse system ; besides, it

was part of the Reserved Half, and itself had charge of spending departments. These arrangements gave rise to a crop of difficulties.

The Finance department in almost every country plays an unpopular role. The position of the Treasury in England, for instance, is said to be one of perpetual conflict with the servants of the State who want more pay than the Treasury thinks they are worth, with the departments of government which want more money than the Treasury is prepared to ask for from the Parliament and government, with the House of Commons which contests the amount demanded and the mode in which it is proposed to be raised, and with the tax-payer. The Finance department in the Indian provinces played a similar role; its business was to raise doubts and difficulties, to place obstacles in what at first sight seemed an attractive proposal for expenditure, and inevitably to delay schemes until they had been fully examined.

OCCASIONS FOR FRICTION

The matters in which it came into conflict with ministers were mainly in respect of (1) schemes of new expenditure put forward by them, which, under the rules, had to be examined by that department, (2) its powers of reappropriation and (3) the enforcing of the observance of financial rules.

EXAMINATION OF SCHEMES OF EXPENDITURE

The constitutional provision relating to the examination of schemes of new expenditure has been stated elsewhere: the Finance department could decline to make provision for them in the Budget unless they had been examined by it, this being one of the few over-riding powers vested in that department. It may be explained here that in practice, the normal assumption was that old expenditure of a recurring kind, provided in former budgets, would be continued; only questions of new expenditure, not previously provided for, of new services and works, came under the examination of the Finance department. It has been authoritatively stated²¹ that when such a new scheme came up, the duty of the department was to examine whether it was in furtherance of a policy approved by Government. In their memorandum supplied to the Feetham Committee, the Government of India had said²² that the Finance department could discuss the necessity for the expenditure and the *general* propriety of the proposals. That committee interpreted²³ general propriety to mean propriety from the financial point of view, and said there must obviously be limits to criticism by the Finance department in matters of policy, but these limits must be left to be settled by convention.

The ministers' complaints against the Finance

department in this regard, which found expression in the memoranda²⁴ they supplied to the Reforms Enquiry Committee and the Indian Statutory Commission, were manifold. It would appear that the Finance department, according to them, often declined to examine and advise on schemes involving new expenditure on the ground that no money was likely to be available for them ; indeed we have an instance²⁵ of a circular issued in which heads of departments were told that it was useless to send up new schemes ; when money was available, no scheme was ready for examination and the finance member declined to provide it. They did not always confine themselves to an examination of the financial aspect of a proposal but often went into the policy underlying it, and undertook a minute and meticulous scrutiny into the smallest technical details of a project. The minister was responsible to the legislature, while the finance member was not ; for the latter, therefore, to examine the policy of the former was placing the minister in a difficult position. Thus if a minister thought his staff was under-manned or under-paid, he had to satisfy the Finance department that this was so. Even that was not sufficient. The Finance department considered itself free to object that, if the ministers' proposals were accepted, other departments could with justice put forward similar proposals for all of which it could not find money. Even when schemes

were accepted by the Cabinet, devices were found by it to delay or defeat them. Under the plea that the rules made them responsible for watching the state of the local government's balances, they called upon the administrative departments not to incur new expenditure even though sanctioned by the Council, should it be found in the course of the year that the revenue was not coming in as expected. The Finance department exercised influence through the standing finance committees, and occasionally²⁶ took care to see that ministers were kept out of that committee. In brief, the complaint was general that the Finance department had practically placed themselves in the position of experts in every department, instead of confining themselves to the more general aspects of each scheme in its financial bearings—a position which appeared to the ministers to be against the intentions of the framers of the constitution.

The interesting part of the story is that the substance underlying these allegations was admitted by finance members and finance secretaries themselves. It was brought out during the cross examination of Mr. Marr, Financial Secretary of Bengal, that the department did look at a scheme from the point of view of policy, if it seemed to them that the scheme was not worth spending money on. It was of course difficult to lay down a general rule in this regard, but he cited an instance

which left no doubt in the matter. When it was proposed in Bengal to send a man to England to learn how to make glass, it raised the question whether, even if they did get the man trained, glass could be manufactured in Bengal. The proposal was dropped. The Auditor-General with the Government of India was clearly of the view²⁷ that a finance member would not be fulfilling his duty if he did not point out that there were possible alternative policies; alternative schemes might be possible and be more economical.

Do these admissions imply that the finance departments were going beyond their legitimate functions as authoritatively set forth by the Feetham Committee? That would be a hasty conclusion. Besides, we should remember that such complaints regarding the dominating position of the Finance department are not peculiar to this country. Lord Salisbury, when Prime Minister and Foreign Secretary, in a public speech,²⁸ made an attack on the Treasury, stating that it was absolutely intolerable the way in which the Treasury was able to thwart the policy not only of the Foreign Department, but also of the Cabinet. Allowing for the personal factor, the main cause for this position of the Finance department would appear to be the difficulties inherent in the separation of the financial from other aspects in dealing with a scheme. It was difficult for

the Finance department not to trench on considerations of policy when making a criticism on financial grounds, the line between the two being hardly clear-cut. A distinguished finance member in the Punjab could not understand²⁹ what people meant when they talked about examining schemes from the financial point of view. "You ask yourself," said he bluntly, "is this a good enough thing to deserve a share of the resources you can provide? I understand my function as a finance member is to scrutinize the usefulness of a particular proposal of expenditure and to record my opinion upon it." Perhaps the difficulty is a bit overstated; but there is no doubt that this attitude was typical of the practice in the provinces. Finance members often examined schemes as a whole, whether they were in furtherance of a policy approved by government, whether alternative schemes were possible, and whether the available resources of the provinces could not be better utilized in other ways. Ministers grumbled; they could, and no doubt did, often appeal to the Governor; often, indeed, they could gain their point only by placing their offices at the disposal of the Governor. But as an able ex-minister has said, this could not be a daily occurrence: "As I have to live with the Finance department and as I have to depend on that Finance department from day to day of my official existence, I would not

make it a normal act of my official life to go constantly against the Finance department."

There was another consideration. According to the strict principle of dyarchy the minister need obtain only the sanction of the Governor to overrule the Finance department; but in some provinces³⁰ a convention was developed that the objection of the Finance department must prevail unless it was over-ruled by the whole Government, and the whole Government probably commanded a majority on the reserved side, and consequently the minister might fail to carry his point of view. This applied *pari passu* to those provinces where the unified system was tried.

The difficulties of the ministers are well brought out in a statement made before the Reforms Enquiry Committee by a minister,³¹ "I am prepared to state this without any exaggeration that it was a very general experience of both the ministers in the United Provinces after the first year, that they had to contend with great difficulties when they went to the Finance department, that pretty frequently they had to go before the Governor, pretty frequently the Governor did not side with them, and pretty frequently they could only gain their point in the end by placing their offices at the disposal of the Governor."

It must be admitted that the blame for this state of affairs cannot entirely be laid at the door

of the Finance department. If the Finance department were left to suggest the objections and also to find the answers, as was the practice in some provinces, obviously the administrative departments had to thank themselves for their helpless position. Again a finance member has said³² that he had more than once been asked whether a department might spend money, actually allotted in its budget to a particular object, on that very object ; so that if they had overdone their control over them, it was their own fault. Again if schemes went to the Finance department too late for examination, as they often did,³³ the blame could not properly be laid at the door of the Finance department if they could not be included in the year's budget. The financial rules were always difficult to understand and to apply ; at some point or other, they were, unless sufficient care was exercised, likely to bring the administrative departments into conflict with audit ; a surrender to the Finance department would save them from that trouble. Misunderstanding of the actual position was, particularly in the early years of the Reforms, responsible for the dominance of the Finance department. It was thus usual for administrative departments to assume that an objection made by the Finance department was final, and, in so assuming, conferred on that department a power of veto which was deliberately withheld from it.

REAPPROPRIATION

As has been already stated, reappropriation means the transfer of funds from one unit of appropriation to another such unit. Under the rules only the Finance department could authorize such reappropriation from one major, minor or subordinate head to another, the minister in charge of a department having power to sanction reappropriation within a grant between heads subordinate to a minor head, which did not involve undertaking a recurring liability. The power of reappropriation from one grant to another was left to the Legislative Council. The general effect of these rules was to ensure that the intensions of the legislature were not seriously departed from, without the knowledge of the Finance department, which would be responsible for interpreting those intentions in a reasonable spirit. A minister from Madras wrote in 1924 that the exercise of powers relating to reappropriation had led occasionally to bitter relations between the Finance department and the administrative departments. The Madras Government, however, says³⁴ that the departments were not able to quote any instance of this bitterness. It cannot be denied, however, that room for bitterness there was ; and, in view of such complaints, it would have been a wise policy to have accepted the recommendation of the Reforms Enquiry Committee that the power of

reappropriation from a major, minor or subordinate head to another, in respect of grants relating to transferred subjects, might be conceded to ministers ; but the Government of India were unable³⁵ to accept it.

THE FINANCE DEPARTMENT A RESERVED ONE

The fact that the Finance department was part of the Reserved Half gave rise to a few special problems. There was thus a feeling³⁶ that reserved departments were treated more leniently and liberally than transferred departments in the scrutiny to which new proposals of expenditure emanating from reserved departments were subjected. Suspicion there was³⁷ that proposals from these departments were less liable to delay on the part of the Finance department. Again, so long as there were two kinds of departments, transferred and reserved, it might happen that the schemes of one section might clash with those of the other, and so long as ministers had not the right to challenge the schemes of the other departments, they were not likely to have an opportunity to get priority for their own schemes ; the reserved departments might obtain priority over the schemes of ministers through their association with the Finance department. That association placed the reserved departments in an advantageous position of knowing everything through the Finance department about

every measure and proposal of the transferred departments, while the latter had no means of obtaining knowledge of what was passing in the reserved departments. The disadvantage to the ministers was that the Reserved Half, taking advantage of this knowledge, applied early for and obtained large sums of money³⁸ by way of reappropriation. These suspicions might or might not be true ; but the existence of these suspicions was sufficient to create friction and render the working of the wheels of administration less smooth than it might have been under other conditions.

THE FINANCE DEPARTMENT A SPENDING DEPARTMENT

Not merely was the Finance department part of the Reserved Half ; it was itself in charge of some spending departments. The practice differed from province to province. In Bengal, the principle that the finance member should not have charge of any large spending departments was followed ; but in provinces where the number of Executive Councilors was limited to two, as in the United Provinces, this could not obviously be adopted. The doubt was raised whether one man could deal with a case altogether satisfactorily from both the administrative and financial points of view. We have it³⁹ from an ex-minister that, on the principle that charity begins at home, the finance member in the

United Provinces was more anxious to see that his reserved departments got all the money they required before other departments got anything they wanted; in the Punjab, however, there were no grounds for this suspicion.⁴⁰ That there was scope for such partiality cannot be gainsaid; it is significant that English experience and the experience of the pre-Reform period in India⁴¹ support this view. To avoid such suspicion, the Reforms Enquiry Committee recommended that the Finance department should not be in charge of the main spending departments. Acting on this, the Government of India in 1926 requested provincial governments to see that, as far as possible, the Finance department was not in charge of any of the main spending departments. There is no doubt that, in theory, as the Auditor-General admitted⁴², it is best that the finance member should be absolutely neutral, that he should not have charge of any spending departments and that any increased expense, consequent on such arrangements, should be disregarded. But the question of expense was an important consideration at any rate in the smaller provinces, and some governments⁴³ could not consequently give effect to the suggestion.

THE PERSONAL FACTOR

While in all these ways complaints were loud enough, it must not be assumed that in every case,

the relations of the ministers with the Finance department were bitter or strained. Here, as elsewhere, the personal factor was an important consideration. In Bihar and Orissa, notwithstanding occasional complaints, the relations of the ministers with the Finance department were said⁴⁴ to have been smooth ; and in the Punjab⁴⁵ during the first three years, at any rate, no minister went to the Governor against the advice of the Finance department.

JOINT FINANCIAL SECRETARY

Apart from the personal factor, and in view of the fact that the ministers had considerable trouble from the Finance department, it is rather surprising that they did not press for the appointment of a Joint Financial Secretary as an expert adviser to them, though provision for such appointment had been made in the rules. The duty of that officer, if appointed, was to act as the financial adviser of ministers in all transferred subjects ; he would be wholly at their disposal to help them on the financial side of their work ; he would prepare their proposals of expenditure and the like for presentation to the Finance department, and would see that their case was properly represented there and promptly dealt with. He would act in liaison between the finance member and the ministers, and would ensure that the transferred

subjects got the same technical assistance and care in their financial bearings as reserved subjects. It would appear that in some provinces, when the proposal for such appointment came up, the ministers were the first to oppose it. The motives are hard to understand. From the evidence given by some of them before the Reforms Enquiry Committee, it may be gathered that such opposition arose from a misunderstanding of the position and duties of that office. One minister thought⁴⁶ that such an official might be looked upon as a spy. Still another view⁴⁷ was that the transferred departments should be able to see whether expenditure in the reserved departments was justified or not and whether they were spending so lavishly as to take away the money that might possibly be available for transferred departments. Perhaps there was also an idea⁴⁸ that the Joint Secretary would be a sort of subordinate to the Finance Secretary, and, therefore, would simply be a fifth wheel in the coach—a suspicion for which there was no ground, if the position of Secretaries and Joint Secretaries in the Government of India was any guide. The existence of a separate office might also tend to create different financial standards in the two sides of government.

To clear misapprehensions, the Reforms Enquiry Committee suggested that the officer might be called the Financial Adviser, with powers similar to those Financial Advisers who had been ap-

pointed in certain departments of the Government of India, *e.g.*, of military finance. The fact that even after such recommendation and the necessary amendment of the rules, such an officer was not appointed perhaps indicates that there were other considerations which stood in the way of such appointment. Financial stringency was one such ; others were the fear that the creation of a new office would undoubtedly involve some duplication of work, and the fact that in the smaller provinces like Assam, the officer would have very little to do in advising in the schemes of the transferred departments.

There seems to be no reasonable doubt, however, that theoretically, in the scheme of dyarchy with a joint budget, such an expert adviser would prove of value to ministers in interpreting the financial rules and in securing that their proposals do not suffer from technical objections which might otherwise be raised by the Finance department. Only experiment, however, can enable us to say, with confidence, whether it will avoid all or some of the difficulties which ministers had to face in their relations with the Finance department.

CHAPTER VII

THE TRANSFERRED SIDE OF GOVERNMENT

I

APPOINTMENT OF MINISTERS

The authors of the Joint Report contemplated that ministers should be appointed by the Governor for the life-time of the Legislative Council, and if re-elected to that body, would be re-eligible for appointment as members of the Executive ; they would not, therefore, hold office at the will of the legislature but at that of their constituents. But this was to be only for a short period, for, elsewhere in the Report¹, it was suggested that it should be open to the legislature after five years' time to place the salaries of ministers on the estimates, thereby converting them into parliamentary ministers, or for the Government of India as a condition of a further transfer of subjects or otherwise, to require that their salaries should be so treated. They urged that the Legislative Council had no experience of the power of dismissing ministers, or the results attending the exercise of such power. As familiarity with the obligations imposed by tenure of office at the will of a representative assembly was lacking, security of tenure for a period for the minis-

ters in the early years was necessary ; it would be a preparation for the full exercise of responsibility.

These views did not find favour with the Government of India or with the Joint Select Committee who considered the Government of India Bill. Not only did the idea of amenability to constituents rather than to the legislature strike them as foreign to English political theory, but in view of the inexperience of the electorate as compared with the legislature, and also of its communal character, this was most unlikely to be of any real use in practice. Apart from this it was easily realized that whatever the initial position of the ministers might be in theory, it could not in practice but be one of amenability to the legislature which had power to grant or withhold their supply ; the idea of appointing ministers for the life-time of the Legislative Council was, therefore, given up ; ministers were to be removable by an adverse vote of the Legislative Council, and, following the practice elsewhere, the Governor was given power to dismiss them if he felt that the situation required such a course.

It was definitely enjoined that officials were not to be chosen as ministers, nor could nominated non-officials aspire² to that position, for no minister was to hold office for a longer period than six months, unless he was or became an elected member of the local legislature. In so far as the rule applied to the general run of nominated members, it was in-

deed sensible ; it was conceded that the power to appoint ministers from the nominated members might be abused. But in so far as some of the nominated members of the legislature sat as representatives of interests for which no constituencies could be found, it might be argued that they should not have been penalised by ineligibility to the office of minister. There was also the contingency that no ministers might be forthcoming from the elected members. Both these reasons were in fact urged in favour of giving the Governor some discretionary power of appointing ministers from among the nominated non-official members. But Indian opinion attached special importance to the representative character of the ministers, and, in deference to that opinion, the rule of appointing only elected members as ministers was made binding on the Governor.

NUMBER, SALARY, STATUS

Obviously, there could be no limit fixed for the number of ministers; that depended on the nature and volume of work in each province, and discretion had to be vested in the Governor. In the larger provinces, there were generally three, in the smaller, two. The fixing of their salaries was a more difficult problem. Indian opinion was almost unanimous³ in asking for the same scale of salaries for ministers as that paid to Executive Councillors.

It was thought that equality of status could be secured only by equality in salary ; the chances of harmonious working, and of a healthy give and take would also enormously be increased because there would be no question of prestige coming in.

There was, of course, another side to the picture. The scale of salaries for the Executive Councillors had been originally fixed with a view to attract European talent to the Indian Civil Service, and having regard to their domicile in a foreign country. Indeed there was no real reason why the Indian members of the Executive Council should have been paid the same salary as the European element thereof ; Indian members of the Council of India in London were, and are, in fact, paid a higher scale of remuneration than those members of the Council domiciled in the United Kingdom. Looking back on these, now historical, discussions, there is no doubt that the connexion between status and salary was overstressed. The position which one occupies in the public life of a country, even in India, is very largely a function of the ability and industry which he brings to bear on the discharge of his duties. That is clear from the discussions which took place in the Legislative Council of Bengal and elsewhere regarding the lowering of the salaries of ministers ; but having regard to the consensus of Indian opinion on the matter, the Joint Select

Committee left it an open question. Their recommendation was that while the status of ministers should be similar to that of the members of the Executive Council, their salaries be fixed by the Legislative Council ; they hoped that the principle implied in a lower scale of salary for members of the India Council domiciled in the United Kingdom might suggest to the Council that it was reasonable for the ministers of the provincial government domiciled in India to be paid a lower scale of remuneration than the European members of the Executive Council. The rules made under the Act laid down that, until otherwise provided for, ministers might be paid the same salary as was payable to a member of the Executive Council.

As indicated above, attempts were made in the Bengal Legislative Council and elsewhere, to reduce the salary of ministers in accordance with the intentions of the Joint Select Committee and as a measure of economy. They were invariably defeated, the argument being urged that, in the eyes of the mass of the people, lower salary always meant lower status.

II

JOINT RESPONSIBILITY

Were the ministers so appointed to be collectively responsible for the policy of government in the Transferred Half ? The intention of the framers

of the constitution in this regard is not on the whole difficult to gather, though the phraseology employed by them in the various documents is not as clear as one would like it to be. In describing the working of the proposed Executive, the authors of the Joint Report suggested⁴ that while, as a general rule, Government should deliberate as a whole, there must certainly be occasions on which the Governor would prefer to discuss a question with *that part of his government directly responsible*; the actual decision on a transferred subject would be taken after general discussion by *the Governor and his ministers*, on a reserved subject by the Governor and the other members of his Executive Council. To the Government of India⁵ it seemed inevitable that among ministers the habit of consultation and joint action would develop, and indeed should be encouraged, and they advised that an order from a transferred department should issue as an order of the Governor acting after consultation with his *ministers*. In the evidence before the Joint Select Committee,⁶ corporate deliberation, responsibility and resignation of the ministers were strongly stressed both by Indian and English delegates, the latter including Sir William Meyer and Lionel Curtis. The Committee accepted that view and advised alteration of the language of the Government of India Bill,⁷ which, as originally drafted, stressed individual responsibility. The clause in

question read: "In relation to a transferred subject, the Governor shall be guided by the advice of the *minister* in charge, unless, having regard to His Majesty's Instructions, he sees sufficient cause to dissent from the opinion of the minister. . . ." They said that it should be recognized from the commencement that ministers were expected to act in concert together, and the clause⁸ was modified, making it obligatory on the Governor to be guided by the advice of his *ministers* in relation to transferred subjects, unless he saw sufficient cause to dissent from *their* opinion.

Certain passages, however, in some of the early documents⁹ would seem to point the other way. Thus the Government of India in their Despatch did not consider it necessary or possible to frame the rules of executive business in such a way as to recognize any collective responsibility on the part of ministers. In the absence of a prime minister, they thought that the meetings of ministers were not likely to acquire the authority of cabinet meetings, and therefore they did not advise that the rules of business should attempt to do more than regulate the relations between the Governor and his individual ministers. The Joint Select Committee wrote that the Governor would have the ordinary constitutional right of dismissing *a minister* whose policy he believed to be either seriously

at fault or out of accord with the views of the Legislative Council. The Devolution Rules made a distinction in respect of collective responsibility between the Reserved Half and the Transferred Half, and would appear to stress individual responsibility in respect of the latter, for the authority vested in the local government over officers of the public services employed in a governor's province was to be exercised in the case of officers serving in a department dealing with reserved subjects by the Governor in Council, and in the case of officers serving in a department dealing with transferred subjects by the Governor acting with *the minister* in charge of the department. The terms of the Instrument of Instructions issued to the Governor also afford support to this interpretation. It spoke of certain matters being transferred to the administration of the Governor acting with *a minister*, and again in considering *a minister's* advice and deciding whether or not there was sufficient cause in any case to dissent from his opinion, he was to have due regard to his relations with the Legislative Council and to the wishes of the people of the presidency as expressed by their representatives therein.

The theoretical position is perhaps best summarized thus: while the Act, the rules made thereunder and the Instrument of Instructions did not prohibit joint responsibility, they made the growth of such responsibility dependent

upon convention, in effect, upon the personal predilections of the Governor and the ministers. The makers of the constitution clearly intended that the responsibility of the ministers should be corporate and not individual.

THE PRACTICE

That joint responsibility as a principle is good in itself is recognized on all hands : it would promote a common political platform transcending caste, creed and groups, thus strengthening political parties both in the Councils and outside. This is specially true in modern days when the function of the Executive as an administrative organ applying laws has become, comparatively, of lesser importance. To-day it is rather a policy-determining organ, initiating proposals and submitting them to the legislature. But in order that the Executive may perform the function of policy-making, there must be a unity of outlook among its members. Such a unity of outlook, clearly, will not be possible without complete coherence in the Executive. Besides, it would make the Governor more careful in over-ruling the advice of ministers. Joint responsibility, no doubt, has its defects : in particular it tends to make the Executive too powerful *vis-a-vis* the legislature ; that body may not be able to punish a delinquent minister of whose acts it disapproves, unless it is prepared to get rid of his

colleagues as well. In view, however, of the overwhelming advantages which joint responsibility has, especially, in the inner counsels of government, there is no doubt that it is to be preferred.

It must, however, be made clear that joint responsibility as a principle of the conduct of Executive business does not require that every case in which an order is passed in one department should receive the approval of all members of the Executive government ; that would obviously be impracticable ; it would militate against the expeditious disposal of business and against the accepted canons of departmental responsibility. What is necessary is that while the bulk of the work does not actually come before the whole body each member would dispose of his work in a corporate atmosphere ; he should recognize that when he passes even a routine order he must be prepared, if necessary, to justify it before the whole government and secure a majority in his favour. To facilitate the creation of this corporate atmosphere the rules of business should be so framed that each member would be kept informed of all the important work on the files of his colleagues, and should have the right of calling for the papers on any subject, and bringing up any matter before the whole government.

A survey of the conditions in the different provinces suggests that, broadly, there were ministers

but not ministries : the acceptance by ministers of their office was not, in general, conditioned by any understanding that the principle of joint responsibility would be observed. Exceptions there were. For instance, in Madras during 1920-26, a genuine attempt was made to understand and act in accordance with the principle of corporate responsibility. The resignation of Pandit Jagat Narain, minister for agriculture in the United Provinces, in company with the Education minister, Mr. Chintamani, on a matter arising in the Education department, and of the acceptance by Mr. Chakravarti in August, 1927 of the Bengal legislature's vote of no-confidence in Mr. A. K. Ghuznavi as a vote of no-confidence in the ministry to which they both belonged are further instances.¹⁰ In the Punjab, during 1923-26 the ministers appear to have worked in harmony and in consultation with each other,¹¹ though not on a formal acceptance of the principle of joint responsibility ; both ministers, it may be added, were drawn from the same party, *viz.*, the National Unionist group. A limited kind of joint responsibility, extending only to motions of no confidence which might be brought against any member of the ministry, is observable¹² in the United Provinces ministry in 1928. In Bengal, in January 1927, Sir Abdur Rahim was appointed¹³ minister on condition that he could find a Hindu colleague with sufficient supporters willing to work

with him. The refusal¹⁴ of Mr. Misra to accept office because the Governor had already offered one ministership to a member of the Council, with whom he thought that it would be difficult to carry on the administration on the principle of joint responsibility, shows that the principle was not unfamiliar. In the later years, the ministry in the Central Provinces worked on the principle of joint responsibility^{14a}. It is noteworthy that the measure of success, which attended the efforts at establishing joint responsibility, is explained either by the growth of an organized party system, albeit communal, as in Madras, or by the force of individual initiative of the ministers concerned, as in the United Provinces. It is also significant that in such cases the ministers could often have their own way, and "on no important matter, which they made a test question, was the official vote necessary for them."¹⁵

These exceptions, however, do not invalidate our general proposition that the principle of joint responsibility did not thrive in the dyarchic climate. What is the explanation? Complaints were heard before the Reforms Enquiry Committee that some Governors were unsympathetic, or did not believe in the principle themselves. One Governor took the view¹⁶ that at the then stage of development of the provinces, the joint responsibility of the ministers would mean the absolute rule of the majority

party in the Council in the transferred departments and that he would prefer to let the convention come into being by a natural process of growth as the result of the development of party organization ; another would appear¹⁷ to have been positively against encouraging joint responsibility, and could only be made to realise the necessity for it under protest by ministers ; a third read¹⁸ the law to imply that each minister had his own responsibility, the plural—' ministers '—in the relevant sections¹⁹ of the Act being read²⁰ distributively. Meetings of the ministry as a whole were rarely summoned by Governors ; even when one minister suggested²¹ that such meetings might be summoned, he was told that the Governor saw no necessity for regular meetings of the ministers, and he would call them whenever the need was apparent.

SUBSTANCE IN THE CRITICISM

Published evidence is insufficient to arrive at a general statement regarding the attitude of Governors. But in one respect the evidence is clear. Meetings of the Governor and ministers collectively were rare. From a statement²² of the Bombay Government, it would appear that one was held there, and, from an answer given²³ by an ex-minister before the Reforms Enquiry Committee, on a few occasions in the United Provinces. These are the only instances available on record of such meet-

ings. From a study of the documents we have referred to, and in particular of the Joint Select Committee Report, one would have expected that the meeting of the Governor with his ministers should have become a normal feature of the administration of the Transferred Half. It is also difficult to account for this singular omission to provide for such meetings in the Rules of Executive Business originally made, at least in some provinces²⁴. For, it must be remembered that in the absence of a Chief minister the initiative to convene meetings of the Transferred Half lay with the Governor ; he had the power of making rules of Executive business. Perhaps this attitude on the part of the Governor regarding joint meetings of the transferred side of Government must be traced to what the present writer considers a fatal mistake of the Government of India. That Government had in their *Despatch* suggested²⁵ that the rules of executive business need not necessarily recognize any collective responsibility on the part of ministers, and the model rules circulated by them to the Governors of provinces (which they were at liberty to accept with or without modifications) were framed²⁶ on this basis ; they provided that the Governor would act with each minister separately, not with both jointly. In one province at least it required all the effort of ministers to get them amended in such a way as to recognize joint responsibility on the part

of ministers ; another Governor thought²⁷ of modifying them ' to the greater prejudice of ministers, but listened to a protest '.

The Reforms Enquiry Committee recommended²⁸ that the rules of executive business made by the Governors should be amended to provide, where this was not already the case, that a minister should be able to make a recommendation to the Governor that any case in his own department should be considered before the joint cabinet or before *that side of the Government with which it was directly concerned*. The Government of India decided²⁹ that, pending the enquiry of the Statutory Commission, no action need be taken on this recommendation.

The connexion between rules of executive business and joint responsibility has not been properly stressed. We agree that the sense of corporate responsibility must largely come from an inner agreement on fundamentals of policy among those who form the Government, and from a developed party system and cannot be the result of a mechanical obedience to rules ; but rules can facilitate and accelerate its growth or hinder it. The rules of business³⁰ in the pre-Reform Executive Council were calculated to foster that corporate character. Their substance, as already indicated elsewhere, is that a member of the Executive Council knew even when he passed a routine order that

he must be prepared, if necessary, to justify it before the whole Council and secure a majority in his favour. It is impossible to resist the impression that such rules of business as regards the transferred side, if provided for from the outset, could have helped to some extent the growth of the principle, when there was a predisposition on the part of ministers in that direction. Rules would indicate the norm that is desirable, and thereby would help wavering men to make up their minds to choose the desirable path.

It must be recognized, however, that the Governor's attitude apart, the primary reason responsible for the general absence of this principle must be sought in that lack of agreement on fundamentals which has characterized Indian political groupings for well-nigh a generation. Observance of the principle would, for instance, seem to require the selection by the Governor of a Chief minister, leaving him to name his colleagues ; it would not only help to bring about a state of collective responsibility but also would lead to that mutual consultation and confidence which are a happy prelude to the strengthening and consolidating of party ties ; it would prevent the Governor from entrusting ministerships to those who have no party backing of their own. As it was, barring a few exceptions, this was not usually the case. The fear was expressed³¹ that if the Chief minister was a Mahome-

dan, probably he would not like the Hindus or take that kind of Hindu who would not quite agree with Mahomedan views. That agreement on fundamentals, which is the foundation alike of joint responsibility as of organization of party on political lines, was not present in sufficient degree. Individual caprice added to this difficulty. Mr. Kelkar, for instance, thought³² that a chief minister would be the boss of the other ministers and that their position would become intolerable. It is, therefore, understandable that ministers were often appointed for their personal ability or from different groups. In the Punjab and Bengal, where the communities are fairly balanced, it is clear that ministers had to be selected from both. To force identical responsibility on ministers whose principles were different and whose supporters were fighting against each other in the Council would have proved troublesome, and it must have endangered the stability of government.

The result was the appointment as ministers by the Governor of those who were not necessarily brought together by principles of policy held in common ; each stood for himself. Mutual consultation, of course, there was ; but it was left to the pleasure and convenience of ministers. Under such conditions, it is easy to see that mutual support in the Legislative Council was not binding. Several instances are on record³³ where a minister

did not support his colleague by vote. Occasionally, ministers were even more hostile towards one another, one minister, for instance, trying³⁴ to play some members of the legislature against his colleague with a view to undermine his position and influence, and possibly to bring about his downfall; Surendranath Banerjea canvassed³⁵ against the Nawab Sahib, his colleague, and vice versa.

Not only was the principle of collective responsibility not accepted in the counsels of government; the differences were given expression to outside. At the Mahomedan Educational Conference held at Jullundur in May 1928, the actions of his colleague, the Hindu minister, were criticized³⁶ and condemned by the Mahomedan minister, Mr. Feroz Khan Noon.

A few years after the Reforms had worked, the evil effects of such haphazard coalitions of ministers were clearly realized. The Reforms Enquiry Committee laid it down that joint responsibility was the ideal and recommended³⁷ that the Devolution Rules and the Instrument of Instructions should suitably be modified to indicate this rather than that transferred subjects were to be administered by the Governor acting on the advice of a single minister. It is unfortunate that this recommendation of the majority of an expert committee, supported in substance by the minority as well, was brushed aside³⁸ by the Government of India on the

ground that the conception of Cabinet responsibility was incapable of translation into regulations, and any attempt to do so would be likely to prevent rather than foster its development. Surely, that objection was not unknown to the committee which made the recommendation. Those who refuse to learn cannot be taught.

So the evil continued. The idea of individual responsibility became so firmly rooted in the minds of legislators as well that even while ministers were willing, as they sometimes were to act up to the principle of corporate responsibility the Legislative Council was not prepared to recognize it. Thus in August 1927, the strange spectacle was witnessed³⁹ of the Bengal Legislative Council insisting on carrying a second separate motion against Mr. Chakravarti in spite of his statement that he would resign as a consequence of the vote against his colleague ! Elsewhere even when a no-confidence motion was moved against the ministry as a whole, the attack was⁴⁰ on individual ministers and not on the policy of the ministry as a whole. It would be hazardous to suggest that the Legislative Council was not aware of the principle, nor even of the desirability of it, for occasionally, they asked⁴¹ for a statement on the attitude taken by the *ministry* on a particular matter ; rather, the principle had not become part of their mental habit in their relations *vis-a-vis* the ministers.

III

GOVERNOR VIS-A-VIS MINISTERS

The constitutional position of the Governor *vis-a-vis* his ministers has given rise to some controversy⁴², though, having regard to the intentions of the framers of the constitution, this must be considered a needless one. The relevant clauses⁴³ of the Act only laid down (1) that in relation to transferred subjects the Governor was to be guided by the advice of his ministers, unless he saw sufficient cause to dissent from their opinion, in which case he might require action to be taken otherwise than in accordance with that advice, and (2) that they were to hold office during his pleasure. The question was raised⁴⁴ whether these clauses were intended to make the Governor, in respect of the Transferred Half, only a constitutional head, in the sense in which, for instance, the Crown in England is. If it be granted that this was the intention, then obviously ministers would be more or less free to administer the departments entrusted to their care according to their own judgement, subject of course to their responsibility to the Legislative Council. If, on the other hand, it were conceded, that the intention of these clauses was not to make the Governor a purely constitutional head, the Governor must obviously be much more powerful, and

it was contended⁴⁵ that the ministers would be reduced to the position of mere advisers ; and, as they were said to hold office during his pleasure, he could replace them at will. This interpretation was sought to be strengthened by reference to what was considered to be the relatively inferior position of ministers, as compared with that of the Executive Councillors. Thus while the Councillors held office for a certain term, ministers could be dismissed by the Governor at any time. This distinction, it was urged,⁴⁶ had something to do with the mode of overruling, for in the Executive Council, they had a power of dissent and of recording it by a minute ; not so the ministers. The Governor was also bound to call for meetings of the Council, and it was the will of the majority of that Council that prevailed. In relation to the transferred side of government, the decision of the Governor acting with the individual minister was final. A minister could not call in the votes of his co-ministers to out-vote the Governor as an Executive Councillor could, for the Governor was not bound to consult all the ministers together.

But this distinction, clearly, is not of much help in arriving at a conclusion regarding the constitutional relationship of the Governor and ministers, for the relationship that existed between the Governor and his Executive Council was defined by considerations different from those that applied to

his relation to ministers. The latter have been stated by the authors of the Joint Report.⁴⁷ "We do not contemplate that, from the outset, the Governor should occupy the position of a purely constitutional Governor who is bound to accept the decisions of his ministers. We reserve to him a power of control, because we regard him as generally responsible for the administration." But the Joint Select Committee was clear⁴⁸ that the Governor should accept the ministers' advice and promote their policy *whenever possible*. Indeed the crux of the matter is : have the makers of the constitution given any indication of when they expected the Governor to over-rule his ministers ? The language of the Act, it must be confessed, is quite general : 'when there is sufficient cause to dissent from their opinion.' There is a clearer indication⁴⁹ given in the Joint Report where its authors say, "Our hope and intention is that the ministers will gladly avail themselves of the Governor's trained advice upon administrative questions, while on his part he will be willing to meet their wishes to the furthest possible extent in cases where he realizes that *they have the support of popular opinion*." In a similar strain wrote⁵⁰ the Joint Select Committee : If, after hearing all the arguments, ministers should decide not to adopt the Governor's advice, then, in the opinion of the Committee, the Governor should ordinarily allow

ministers to have their way, fixing the responsibility upon them, even if it may subsequently be necessary for him to veto any particular piece of legislation. It is not possible but that in India, as in all other countries, mistakes will be made by ministers, *acting with the approval of a majority of the legislative council*, but there is no way of learning except through experience and by the realization of responsibility.

The theory of the constitution, therefore, if we go by the expressed opinions of the Joint Report as well as of the Joint Select Committee, is that normally in the making of policy when ministers were backed up by popular opinion, as expressed in the legislative council, the Governor must not interpose his will. Indeed when we know the whole tenor of the constitution and the *raison d'être* of all the complexities which a scheme of dyarchy necessarily involved, there is no doubt that this is the right interpretation. The witnesses⁵¹ who read the word 'advice' occurring in a section in the Act⁵² to mean that the ministers were intended to be merely advisers of the Governor were evidently reading the word far too literally. No such deduction can be made from the use of this word, as it is used in corresponding provisions in the constitutions of Canada, Australia, South Africa and the Irish Free State.

THE INSTRUMENT OF INSTRUCTIONS

It is this intention of the authors of the Joint Report and of the Joint Select Committee that was embodied as a direction in the Instrument of Instructions⁵³ to the Governor : when considering a minister's advice and deciding whether or not to dissent from it, the Governor was to have due regard to his relations with the Legislative Council and to the wishes of the people as expressed by their representatives therein. This direction must be considered to be in strict accordance with the theory of dyarchy ; for dyarchy was essentially a training ground, and ministers must be trained to recognise their responsibility to the legislature ; if they ignored it, the Governor was to tell them in effect that they could not afford to do so. Ministers were new to their work, and the idea of amenability to the wishes of the legislature had to be slowly learnt. If we accept the basic principle of dyarchy, viz., that it is a transitional stage to full responsible government, this check on the power of the ministers is, I think, a logical conclusion.

The same Instrument also directed the Governor to safeguard members of the services in the legitimate exercise of their functions and in the enjoyment of all recognized rights and privileges and to see that no order of his government was so framed that any of the diverse interests of, or

arising from, race, religion, education, social condition, wealth or any other circumstances might receive unfair advantage or unfairly be deprived of privileges or advantages which they had enjoyed, or be excluded from the enjoyment of benefits which might thereafter be conferred on the people at large. This restriction obviously was based on somewhat different grounds. It is not the desire to make ministers responsible to the wishes of the Legislative Council that was the guiding consideration ; rather it was the fear that a ministry backed up by a strong majority in the legislature might be tempted to abuse the power to the disadvantage of particular sections or classes of the people—a distrust in the capacity of ministers and legislature who were new to their work to use their power wisely. It may well be argued that the clause was drawn in somewhat too general terms, as indeed the Reforms Enquiry Committee recognised ; one cannot eat the cake and yet have it—the training of ministers in responsible government cannot be done, while they are not allowed to govern their departments themselves. As was ably argued⁵⁴ in the House of Commons, the responsibility delegated, whatever it was, must be really delegated and must be made absolute, and the Governor must stand aside and see made what he knew to be mistakes in order that the lessons of self-government and the

duties and difficulties of self-government might be learnt from the start. Democracy is the best form of government because, as Aristotle says, it soon proves its own corrective. If one set of ministers make a mess of things, they are turned out of office very soon. Power must be equal to responsibility.

The nature and value of the Instrument of Instructions must be clearly grasped if we are properly to appreciate its place in shaping the relations of the Governor with his ministers. Elsewhere, in the British Dominions, the relations between the Governor-General or Governor as the King's representative and his Council of ministers in respect of the exercise of the executive powers vested in him by law are also governed by an Instrument of Instructions. When first issued, these Instructions were intended to take the place of the un-written usages, which, in the United Kingdom, had in process of time materially affected the manner of the exercise of the Crown's power without altering the strictly legal position. They are susceptible of infinite variation according to the stage of constitutional development with which they are intended to deal. They may, for example, direct the Crown's representative either to exercise his powers entirely at his own discretion, consult a body of councillors but not necessarily to follow their advice or to be guided by the advice of ministers in certain matters, though not in others,

or to act on all matters on ministers' advice. But the Instrument of Instructions, it is important to note, does not itself create any rights. It neither defines nor creates legal rights and obligations ; the courts cannot take cognizance of it. It is mandatory in the sense that the Governor is charged by His Majesty to do certain things and to take care that certain things are done in a certain manner ; he is accountable to the Crown, not to the courts, for any breach of his Instructions—an accountability which could be enforced in the last resort by his removal from office.

The place of the Instrument, then, in the scheme of dyarchy is that it was intended to give the Governor some guidance in the comparatively delicate matter of his relations with ministers ; the directions contained therein measured the extent to which the ministerial portion of the government was to be regarded as still coming short of a purely constitutional position. They were the means by which the discretion of the ministers was still to be regarded in some respects as tempered by the need for securing that the wishes of Parliament in vital matters, even in the transferred side of government, were not disregarded.

There is, however, a practical, as distinguished from a theoretical, side to the whole matter, which also requires consideration. The Governor's power to invoke the aid of the Instructions to overrule his

ministers was limited by one important consideration, *viz.*, the support the ministers commanded in the legislature. When a Governor, after full consideration, rejected a minister's advice, two courses were open to a minister. If he felt that he had not the legislature behind him, and if he was not prepared to resign, he would accept the Governor's ruling. If, however, he could rely on the support of a majority in the legislature, he would probably resign, since there was every likelihood that the Governor would be unable to obtain another minister from a legislature which had in its power to make the position of such a minister quite impossible. The Governor would then be forced to dissolve the Council. If the new Council was still against him, he would either be forced to give way or else to proceed to the extreme measure of assuming control of the administration of the departments concerned. That is a position to which few Governors would like to be reduced. The ministers' strength *vis-a-vis* the Governor would therefore in practice largely depend on their support in the legislature. The position of the minister who had at his back a majority in the legislature was, in fact, so strong that the Governor would require very cogent reasons to dissent from his views. Even a minister without a majority was in a comparatively strong position, since he had always the threat of

resignation as a final lever, and no Governor could, possibly regard ministerial resignations in other than a serious light. "As a matter of fact," said Mr. Chintamani,⁵⁵ "until the date of my resignation I prevailed in all matters by showing that I was ready to go out."

This consideration apart, to complete our understanding of the constitutional position, we may note that the Reforms Enquiry Committee considered the wording of the Instrument of Instructions too general. They felt that it was not strictly in accordance with the intention of the Joint Select Committee that normally the Governor should accept the advice of ministers, and recommended that the Instrument of Instructions should be amended so as to provide that the Governor should not dissent from his ministers except for certain specified purposes, viz., the prevention of unfair discrimination among classes and interests, the protection of minorities and the safeguarding of his own responsibility for reserved subjects and the interests of members of the permanent services. On the ground that it was undesirable to stereotype local practice, and that every possible experiment might be tried within limits which Parliament itself determined not to make too rigid, the Government of India decided⁵⁶ to take no action on this recommendation pending the enquiry to be made by the Indian Statutory Commission.

COMPLAINTS

It was perhaps inevitable that the Governor's attitude in relation to ministers was occasionally subjected to severe criticism both by the ministers and the Legislative Councils.⁵⁷ Thus it was said that ministers had no real power and that they were constantly overruled; while in matters of policy ministers were often allowed to have their way, their decision in details was often overruled; secretaries had 'pre-audience' with the Governor, and their counsel weighed with him as against that of their political chiefs; the Governor assumed the sole power of appointment and transfer; ministers were not taken into confidence regarding the conferment of honour; in brief, as the ultimate authority, the Governor ran the department, and indeed was made more absolute in the administration of transferred departments than in reserved subjects.

Side by side with these, there are also evidences⁵⁸ to show that often the Governor's relations with his ministers were harmonious. We have it on record that in one province the Governor's power of overruling the ministers was never used at all; in another a minister asserted that during the eight years he was minister, there had not been a single occasion when he had been overruled by the Governor.

The fact that ministers got on so well with the

Governors need not be, of course, as was in some quarters, regarded⁵⁹ as an indication that they were subservient: "Nothing is further from the truth," one ex-minister has stated with pardonable indignation. "Our task was sometimes uphill, but we fought without flinching, and almost always succeeded in carrying our points. Referring to this unfounded accusation, Sir John Kerr once remarked that he wished he could show some of my files to my critics."

While the substance of this claim may perhaps be conceded, it is difficult to resist the impression that it underrates the influence of the Governor in ministerial counsels. A minister from that province, where relations are said to have been so harmonious, states⁶⁰ that "the ministry has been a scape-goat for all that happened. It was either the Muslim minister or the Hindu minister or the Sikh who did it, but as a matter of fact *no one could have done anything* which was *unpalatable to the Governor.*"

Allowing for an element of exaggeration in this as well, there is no doubt that the Governor's position in practice was very strong. Perfect agreement to the extent of not being overruled at all was, clearly, exceptional. Rather our evidence would indicate⁶¹ that while in several instances discussion led to either agreement or to a compromise acceptable to both parties, in many others the

intentions of the ministers were altered as a result of written or oral discussion with the Governor ; that the Governor did occasionally differ⁵² from the recommendations of his ministers. These include comparatively insignificant matters like nominations to local boards as well as principles of administration like the grounds on which resolutions of municipal bodies could be suspended. The records also include a number of instances of a tendency on the part of the ministers to treat themselves as merely a half-way house to the Governor, to put a case or to ask for advice. There is no doubt that the Governor's experience, and the prestige attaching to his position often enabled him to deflect the course of administration and to have a real voice in the affairs of the Transferred Half. He maintained a central position not always merely as arbiter or reviser, but as the final repository of administrative experience. Occasionally he was responsible for the initiation of measures and it was not uncommon for the decision on a matter to be left by the ministers to his wisdom.

SOURCES OF THE GOVERNOR'S STRENGTH

Several causes helped to strengthen the position of the Governor in relation to his ministers. From the first, as we have seen, the early documents did not intend him to be a purely constitutional

head ; in particular, the Instrument of Instructions appeared to vest in him vast powers. The power vested in the Governor to make rules to govern his relations with ministers was effectively used. Thus certain classes of papers were to be submitted to the Governors before orders were issued. The list was so drawn up as to ensure that no important question could be decided without the personal concurrence of the Governor. The list⁶³ includes resolutions on administration reports, all orders involving important principles or any material departure from previous policy, all correspondence with the Government of India and the Secretary of State except on routine matters, proposals for increase or diminution of heads of departments, orders affecting emoluments and pensions and those on memorials to the disadvantage of the higher officers, all petitions in connexion with sentences of death passed in criminal cases, cases of importance in which it was proposed to take action against the advice of the head of a department, proposals involving legislation, imposition of taxation and the raising of loans, and any other cases which the Governor specially directed to be submitted to him. Further, acting under a direction⁶⁴ in the Instrument of Instructions, the Governor also invariably preserved the right of Heads of Departments and secretaries to direct access to him. His power to decide 'mixed cases' made the ministers look

up to him for advice. In virtue of this power, cases in which there was disagreement between the Member or minister in charge of the department and the Member or minister in charge of another department concerned, or where it was doubtful to which department a case belonged, or when it was doubtful whether an action taken in a transferred department affected a reserved department or vice versa, had to be referred to the Governor for final decision. The division of subjects between the reserved and transferred side, as effected by the Devolution Rules, provided many opportunities for such overlapping. Witness the position of a minister who was in charge of industries without factories and electricity, of agriculture without irrigation, and of a minister of development without forests. This overlapping of functions sometimes placed the minister in awkward situations, from which he thought only the Governor could save him. Officers of the Indian Civil Service had certain duties connected with transferred subjects, e.g. excise. On one occasion,⁶⁵ a district officer refused to move in the matter of an appeal in an excise case. The member of the Executive Council in charge of the administration of justice supported the district officer, and the Governor was forced to intervene on behalf of the minister in charge of Excise. Besides, the Governor was the channel through which the orders of the Secretary of State

and the Governor-General were issued to ministers. Under the rules and standing orders of the Legislative Council, the conduct of a Governor could not be questioned in the Legislative Council by interpellation or resolution. Besides, constant efforts were made⁶⁶ to persuade the Governor to control the ministry in order to safeguard the communal interests of a minority in the Council.

Constitutional documents and rules apart, there is no doubt that the ministers themselves were partly responsible for strengthening the position of the Governor. Especially in the early years of the Reforms, ministers failed to realize that their interference in administrative details must be reduced to the minimum. Recommendations of district officers, commissioners or heads of departments in regard to such matters as nominations to local boards were interfered with for party purposes ; it was inevitable that the Governor should intervene not only to protect the interests of minorities but to protect the legitimate rights of the Services and to see that nepotism and corruption were avoided. Besides, with the few exceptions which we have noticed earlier, they made no attempt to pool their strength by acting on the principle of joint responsibility ; generally, they had not behind them the support of a developed party majority ; with exceptions again, they showed themselves more anxious

to retain office than to press their opinions. There is considerable truth in the powerful indictment of a member of the Madras Legislative Council in a memorandum⁶⁷ to the Reforms Enquiry Committee that ministers cared more for the glamour and profit of office than for their self-respect or for making responsibility real. "Our ministers," he says, "have tried every remedy except the constitutional one of resigning. They recall the case of the man, to quote De Quincey, who always went about with a very dirty face ; his friends made anxious enquiries ; he complained that his was a terrible malady ; that he tried many remedies, that physics, electricity and magnetism had exhausted their resources, but the face *would* be dirty. They asked him 'Did you try soap and water' ? He replied 'No'. Our ministers seem to have been about as sensible and as sensitive." This statement must be read subject to exceptions, and also to the possibility that non-resignation should not always be taken to imply servility : the possibility exists that the ministers might be convinced of a certain point of view after hearing the Governor. Again, it must be conceded, that resignation is not always a practicable remedy ; the healthy desire for a political career and to achieve something on which they had set their hearts would operate as a powerful incentive in ordinary men to put up with being overruled in what they consider

minor issues.

Among other causes of the power of the Governor must be mentioned the pernicious practice⁶⁸ of appointing ministers to the post of Executive Councillors, for the hope of getting chosen to a secure job would operate to check the aspirant's sense of independence. Finally in some provinces, the practice of 'obstruction' by the well-disciplined Swarajya Party drove the ministers into the arms of the Governor, for they required all the support from official and nominated members to enable them to continue in power. And this could be had only at a price.

IV

THE SERVICES

The problems in the organization of the services, peculiar to a dyarchic constitution, are mainly two. In the first place, when officers employed under the administrative control of ministers in the Transferred Half of the administration are allowed to appeal from their decisions to a different authority (who is not responsible to the same legislature as ministers are) friction may arise, and some provision must be made to balance the protection of the legitimate rights of such services and the maintenance of the responsibility of the ministers

to the legislature, and to ensure that such friction does not adversely affect the efficiency of the administration; and secondly, when the same public servant is called upon to serve both on the reserved and transferred sides of government, conflicts may occur on account of divergent orders received from them, and arrangements are necessary to see that such conflicts do not similarly affect efficiency.

THE RIGHTS OF THE SERVICES

There were two main groups of services working under the provincial governments, the all-India Services, and the Provincial services, including under this latter term the subordinate services. With the latter, we are not in this section concerned, as their recruitment and control were⁶⁹ primarily in the hands of the provincial governments, and did not raise either the problem of extraneous control, or of overlapping to which we referred in an earlier paragraph. The main all-India services were the Indian Civil Service, Indian Police Service, Indian Forest Service, Indian Service of Engineers, Indian Educational Service, Indian Agricultural Service, Indian Veterinary Service and the Indian Medical Service (Civil).

Before the acceptance of the recommendations of the Lee Commission (1924), broadly, the recruitment and the final control of all these services were

in the hands of the Secretary of State for India. That Commission, to whom the task was entrusted of suggesting proposals for the reorganization of the superior services, recommended that the first three of these services and the Irrigation branch of the Indian service of Engineers, who were operating in the reserved field, should continue to be recruited by the Secretary of State, and that, as a corollary, his control with all the safeguards which that control involved, should be maintained. The other services mentioned were operating in the Transferred field ; so did the Forest service in Burma and Bombay. The Commission recommended that the control of ministers over most of these services should be made more complete by closing the recruitment for them on an all-India basis. The officers already in these services were free to remain, retaining their all-India status and privileges, but recruits for these branches of administration would in future be appointed by provincial governments, and would constitute provincial services. The services dealt with in this manner were the Education service, the Agricultural service, the Veterinary service and the Indian Service of Engineers (Roads and Buildings branch).

But the Commission did not make the same recommendation as regards the Indian Medical Service, though it also worked within the transferred field. They took account of two considera-

tions, which, in their opinion, made it essential to treat this service on somewhat different principles, viz., the necessity for maintaining an adequate reserve of medical men for the emergency of war and the Secretary of State's obligation to maintain an adequate supply of European medical men of the highest qualifications for the care of members of European services and their families. Hence while they held that in this department, as in other transferred departments, the recruitment and control of civil medical personnel *generally* should lie with the Governor and ministers, the provincial government should be required to employ in its civil medical department a certain number of officers lent from the medical department of the army in India ; they would have the same rights which the all-India services operating in the reserved side would have.

The problem from our point of view reduces itself to this : There were members of certain all-India services recruited by the Secretary of State prior to 1924, and operating in the Transferred Half, and, after that date in addition that part of the Indian Medical Service lent from the medical department of the Army in India for service in the provinces, who enjoyed certain rights. How far did these rights operate to make the responsibility of ministers for the administration of their departments illusory in practice ?

These rights related to the conditions of service, pay and allowances, discipline and control ; they are scattered through certain sections⁷⁰ in the Act, various rules⁷¹ made thereunder and the Instrument of Instructions issued to the Governor. Briefly they guaranteed⁷² to persons appointed before the commencement of the Government of India Act, 1919, the existing and accruing rights or compensation in lieu thereof ; the conditions of service, pay and allowances and discipline and conduct were to be regulated by the Secretary of State in Council ; their salaries, pensions and payments on appeal were not subject to the vote of legislatures in India. The appointment of any one who was not a member of an all-India service to posts borne on the cadre of such a service was only to be made with the sanction of the Secretary of State in Council, save as provided by any law or rule or orders made by the Secretary of State in Council, and any increase in the number of posts to a provincial service which would adversely affect any person who was a member of a corresponding all-India service on 9th March, 1926 or the creation of any specialist post which would adversely affect any member of an all-India service was similarly subject to the sanction of the Secretary of State.

More direct limitations on the power of the ministers were the protection afforded to the ser-

vices from dismissal by any authority subordinate to the appointing authority ; the right to be heard in defence before an order of dismissal, removal or reduction was passed ; personal concurrence of the Governor required to any order affecting emoluments, or pension, any order of formal censure, or any order on a memorial to the disadvantage of an all-India service ; personal concurrence of the Governor required to an order of posting of an officer of an all-India service ; the right of complaint to the Governor against any order of an official superior in a governor's province and direction to the Governor to examine the complaint and to take such action on it as might appear to him just and equitable. Further there was the right of appeal to the Secretary of State in Council (i) from any order passed by any authority in India, of censure, withholding of increments or promotion, reduction, recovery from pay caused by negligence or breach of orders, suspension, removal or dismissal, or (ii) from any order altering or interpreting to his disadvantage any rule or contract regulating conditions of service, pay, allowances or pension made by the Secretary of State in Council and (iii) from any order terminating employment otherwise than on reaching the age of superannuation. Besides, the Governor of each province was required by his Instrument of Instructions⁷³ to safeguard all members of the

Services in the legitimate exercise of their functions, and in the enjoyment of all recognized rights and privileges and to see that the Government ordered all things justly and reasonably in their regard. The rules of executive business made by the Governors of provinces in virtue of the power granted to them by the Act⁷⁴ indicate that they were fully aware of the terms of their Instructions. Thus invariably the rules safeguarded the right of access of the Secretaries to the Governor and provided that the minister, before negating the recommendations of important officers like the Head of a department, should lay the papers before the Governor.

This is indeed a formidable list. It is a well-understood principle in the organisation of the Civil Services under a parliamentary executive that while care is taken to see that the recruitment of the civil service is free from political influence, once the candidates enter the service the political chief has the right of control over them, including the ultimate one of dismissal. That is obviously necessary for maintaining the morale of the services and to ensure their due subordination to their chiefs. The safeguard against abuse of the ministers' power for political or other improper reasons lies in an informed and critical public opinion. It is one of the many anomalies under which dyarchy worked in the Indian provinces that the most

important officers working under the ministers' orders were not subject to their control.

RAISON D'ETRE

Surely when these safeguards were provided for in the Act and the rules made thereunder, the makers of the constitution were aware that they were, clearly, an anomaly. Why then did they provide them? The reason, I think, is to be sought in two directions, *viz.*, the position of the Services at the time when the principle of responsible government was introduced, and the racial differences between the majority of the members of the services and their new political chiefs. Government is a going concern and abrupt changes in its personnel are as undesirable as they are impossible. There were many members of the services, recruited under certain conditions and guarantees before 1919; it appeared but just that these were preserved. One of the Services, in particular, the Indian Civil Service, the Lloyd Georgian 'Steel-frame' of Indian administration, was unique in its service traditions; it had not merely executed a policy; it had also practically initiated it. For many years, indeed, the Indian Civil Service was not merely an administration; it was also a Government. To expect its members to fall in line with the new order of things and to be subordinate to their new political

heads in all things was to expect the impossible. The racial difference added to this difficulty. The importance of this factor is that it made uncertain the existence of that public opinion which, elsewhere, is the best safeguard against unjust punishments of civil servants. It was feared that public opinion which was clamouring for further Indianisation would naturally be prone either to support the popular ministers in whatever action they took against the civil servants, or at best be indifferent to the injustice that might be done. Briefly, there was distrust of the Indian, both ministers and people.

HOPES AND FEARS

While, therefore, the existence of the anomaly was known, it was hoped⁷⁵—as is usual with all those who support safeguards and anomalies—that there would be a spirit of give and take on all sides, so that in effect, the safeguards would not be used. Lord Carmichael, for instance, hoped⁷⁶ that ministers would trust the Civil service men, and Sir William Meyer,⁷⁷ that the service men on their part, in particular the younger among them, would adapt themselves to the new conditions.

But it was realized nevertheless that mutual goodwill and toleration were not easily created. On the part of the civil servants the objection to serve under ministers was not, it is good to be told, because they were Indians but because they had

not such administrative training and experience as to command the confidence of the Services which would be entrusted to their care. There was a further difficulty. As Lord Morley is reported to have said,⁷⁸ "it cannot be easy for any man to waken up to new times after a generation of good honest labour in old times." It was a change from a position of wide authority and responsibility, with interesting work closely concerned with the welfare of the districts and considerable influence on the policy of the Government, to a position in which much of the interesting work had been taken away, authority was more limited, and responsibility was ordinarily less, but in which owing to political and communal agitation, difficult situations were more likely to arise and had to be faced with the expectation of unsympathetic criticism.

On the part of the ministers it required great tact, which might not be forthcoming, to deal with the services who were so well protected in their rights ; as was well said,⁷⁹ it was like being asked to use petrol to drive the mechanism designed for a steam engine.

From all accounts,⁸⁰ it would appear that in general the relations between the ministers and the services were cordial and harmonious ; some reports would even describe them as excellent. A still higher degree of co-operation is perhaps implied in the statement⁸¹ of Sir C. Innes, sometime

Governor of Burma, before the Joint Committee :
“ One of my heads of departments rather astonished me about two years ago by saying that, in no circumstances, would he return to autocracy ; he preferred working with the minister. That was one of my heads of departments.” The following account⁸² occurring in the memorandum of the Bihar and Orissa Government can, however, be taken as typical : The relations between the members of the services and the members of the reformed Government with whom they have been brought into contact have been harmonious. The heads of transferred departments and Secretaries acknowledge the readiness of ministers to discuss questions of importance and to attach full weight to their opinion and experience. The ministers themselves consider that the relations between them and the public services were generally smooth. In this connexion they noted as follows :—“ As we were anxious to have co-operation of the public services, our differences used to be settled by discussion. The orders passed by us were carried without apparent resentment. There were occasional protests from the local officers when the reformed Government did not act according to their wishes.” Such protests from local officers were not unknown even in pre-Reform days.

This statement must, however, be taken only

as, what it was intended to be, a general statement of the position. It is interesting to note that this co-operation was greatest, as indeed it was natural, with the younger generation of the Services,⁸³ the generation of those who had worked under the old regime still having memories of different times. Again there was the maximum harmony⁸⁴ when ministers least interfered with the details of administration. The personality of the Governor could also be a helpful factor. In Assam, we are told,⁸⁵ the Governor made it clear to heads of departments that they were in every way subordinate to the ministers and must carry out their orders. The powers of exposition, tact and enthusiasm of the officers⁸⁶ would naturally help smooth relations.

PRACTICAL DIFFICULTIES

The tributes of provincial governments to the general sense of co-operation must not, however, blind us to certain practical difficulties which were present at the core, and sometimes came to the surface. In the evidence before the Reforms Enquiry Committee several instances were disclosed where members of the services did not, according to ministers, wholeheartedly co-operate with their political chiefs. There is no doubt much to be said on both sides. The ministers thought that the services should obey them ; the members of the services thought that the ministers were new to their

work and should be guided by the advice, which they were in a position to give on account of their administrative experience. The ministers could claim that they knew their country and people better. Such friction⁸⁷ as existed was less in the later years of the Reforms than in the earlier ; less when ministers desisted from interfering with the details of administration. Cases have been known⁸⁸ where ministers exercised pressure on heads of departments in the matter of appointments and on irrelevant personal grounds. A distinguished civil servant has said⁸⁹ that he was on many occasions asked to alter his proposals for both important and comparatively unimportant appointments and to fall in with the private plans of the minister for these appointments. Even the postings of subordinate officers to small towns and villages were not too unimportant for the minister to interest himself in. As a rule it was perfectly clear that the peculiar actions of the minister were traceable to a desire to please a political friend or placate a foe.

But apart from what may be called unjustifiable interference, there is no doubt that the ministers' position in relation to services was nothing enviable. Thus in Madras⁹⁰ when the post of Surgeon-General fell vacant, the minister for Local self-government, who had the medical portfolio, could not get his nominee appointed, but an I.M.S. officer from Northern India was sent down as Sur-

geon-General to the Government. The minister desired to encourage indigenous medicine but the Surgeon-General did not see⁹¹ eye-to-eye with him. If a minister found there were several superfluous posts in the transferred departments filled by members of the all-India services, or that the duties of some of them could be efficiently discharged by the less paid officers of the Provincial services, the minister had no power to abolish any such post. The reservation of certain posts in the transferred departments to the Indian Civil Service also caused⁹² some inconvenience in that it did not leave enough scope for the minister to make a satisfactory choice ; for example, the head of a co-operative department should be endowed with a large amount of missionary zeal and sufficient acquaintance with prominent men and conditions in the rural areas ; a knowledge of, and ability to speak, the vernacular of the locality would also be helpful. The minister could not go beyond the cadre of the Indian Civil Service, even if he thought that such men were not available in that cadre.

The right of access of Secretaries and Heads of departments to the Governor was another source of friction. Though the rules said that these could go to the Governor only after intimating their intention to the minister, in practice, we are told,⁹³ very often the ministers knew of this only after they had discussed the case with the Governor. The

natural difference between the bureaucratic and popular points of view was another cause, for so long as ministers could not rely absolutely on the support of a majority in the legislature and so long as the legislature continued to show an inclination to interfere in executive details, ministers would, not unnaturally, be to a considerable extent influenced by what they thought would be the attitude of the legislature to a particular case, instead of deciding it purely on its merits. This was naturally repugnant to the permanent officials in charge of departments.

Small details in routine administration are also important ; *e.g.*, ministers, not quite unnaturally, were often slow in the dispatch of business. Again, accessibility on the part of ministers would often facilitate the disposal of cases, but it happened⁹⁴ that some ministers had no regular office hours, nor had they regular interviews with the heads of departments. It sometimes required great patience on the part of the officers before they succeeded in seeing their ministers.

Even where the services did not openly protest, the changed conditions of work caused many to take less pride and interest in their work,⁹⁵ due to the fact that they were called upon to carry out policies in which they had little faith, and which they knew were merely devised to place or to keep a minister or a party in power.

THE LEGISLATURE AND THE SERVICES

Again, the legislatures were as helpless as ministers were over the services, their salaries being non-votable. Instances are on record⁹⁶ where, in despair as it were, the Legislative Council moved motions for cutting down the pay of the personal and subordinate staff of such services to indicate their disapproval of the action of the officers. They were also apt to concentrate⁹⁷ criticism on the services which should rightly attach to the Government which adopted the policy. It is to the credit of ministers that they were able to say, as one of them said,⁹⁸ "I hold myself responsible for all that is done. I do not think that the Hon. member is right in talking about the Secretaries."

SERVING TWO MASTERS

There was, finally, some overlapping. Thus in the administration of some transferred subjects, officers were employed whose main sphere of activity lay in reserved subjects. Thus the district officer had some connexion with a transferred subject, Excise. This was in any case inevitable, for it must at all times be difficult to divide government into water-tight compartments. The district collector, primarily serving under the Reserved Half, had some statutory duties in connexion with local boards. He could suspend the action of local bodies if, in his opinion, it was likely to lead to

serious breach of the peace or serious injury to the public or to any class of persons ; could inspect them ; he was the channel for the communication of municipal budgets and the minutes of meetings to Government ; and he had to perform a statutory duty allotted to local bodies, if neglected by them and if ordered by Government. Cases are on record⁹⁹ where in connexion with the performance of such duties the officers felt uneasy as to the attitude which the government on the transferred side might take. The instance of a district officer refusing to move in the matter of an appeal in an excise case, necessitating the intervention of the Governor, has been referred to elsewhere. Again, the Collector had to be consulted¹⁰⁰ by the Public Works Department—a transferred one—in connexion with all proposals for important changes in the distribution of water or in any other branch of public works activities, and these proposals might not be disregarded by a minister except for reasons to be recorded. That department in the discharge of its normal functions had to serve both the reserved and the transferred halves. In the Secretariat, the Secretaries had to serve¹⁰¹ more than one master, the Secretary for development, for instance, serving both the minister for Development as well as the Home Member, and the Secretary in the Public works department, both the Law Member as well as the minister for

Development.

Public servants, who had duties in both a reserved department and a transferred one, were kept under the control of that side of Government which was concerned with the budget head from which their pay was drawn for purposes of posting, promotion, and discipline. This made for simplicity and avoided improper conflict of jurisdiction.

CHAPTER VIII

ATTITUDE OF THE LEGISLATURE TOWARDS THE TRANSFERRED HALF

The whole object of introducing the system of dyarchy, with all the anomalies it necessarily involved, was to train the ministers and the legislature in responsibility ; ministers should learn to use their power generally in accordance with the wishes of the legislature, and the legislature in their turn according to the wishes of the electorate. Clearly, the relations between the Transferred Half and the Legislature assume great importance in a study on the working of dyarchy.

I

TWO FACTORS

These relations, however, cannot be understood except in the light of two factors which settled their general contour, *viz.*, the existence of a *bloc* of nominated members in the Council, and the absence of an organized party system.

The strength of the nominated block in the provincial legislatures has been discussed elsewhere ; with the official element it was nowhere more than 27 per cent. of the total strength. Its importance arose mainly from the fact that party organization in the legislatures had not developed.

Even if there were well-knit homogeneous parties which, with the varying fortunes of elections, could command a majority in the legislatures, it is unlikely that the student of dyarchy could altogether have ignored the nominated group. As it was, parties were ill-organized. The real cause of such lack of organization must, of course, be sought in other political and social factors, but there can be no reasonable doubt that among the factors which delayed the growth of organized political parties, the existence of the nominated *bloc* must be reckoned as one. The connexion was something like this : it enabled the ministers to continue in office even when they commanded the votes of only a minority of the elected members. A leader who aspired to the office of ministry was not altogether without support in the Council ; he would be able to command some following, the number of supporters varying with his ability, influence and other factors which generally help to draw people together. When this number was not sufficiently large to enable ministers to command an elected majority, two courses were open to them : to make efforts to get greater support from the elected members, or if that support were not easily forthcoming, from *any* other accessible quarter. It is the habit of the human mind, though not always a defensible one, to be tempted to take the line of least resistance ;

if the support of the official and nominated members could be had more easily, the effort to get the necessary support of elected members would be less. On the other hand, as indicated in an earlier chapter, circumstances were favourable to draw the ministers into the arms of the Reserved Half. The Transferred Half and the Reserved Half were in constant association in the daily work of government, through joint deliberation ; again the ministers felt it necessary to get a certain amount of support from the civil service, the Finance department, and the Governor—who were all considered, in the main, as being in alliance with the Reserved Half ; factors like these tended to throw the ministers more and more into the arms of the Reserved Half. On their part, the Reserved Half were willing to extend their co-operation on very reasonable terms, for they would like, for reasons already discussed, to get as much support as they could from ministerial groups for carrying their Bills and their budget through the legislatures, if only to avoid constant resort to the extraordinary powers of the Governor.

This statement assumes that nominated members—officials and non-officials—could in general be trusted to vote in transferred subjects according to the instructions of the Reserved Half. The authors of the Report on Indian Constitutional Reforms observed that they wished to see the convention

established that on the subjects transferred to the control of ministers, the official members of the legislative council would abstain from voting and leave the decision of the question to the non-official members. There was some diversity of opinion among the local governments on this suggestion. It was urged on the other side that for some time to come, administrative experience would continue to be vested chiefly in the official members, and that as full members of the Council, and also as in some measure representing the views of the masses, they should have a right, not merely to express their views, but to give point to their opinion by the exercise of a vote. The Government of India, however, felt¹ that the official members should have freedom of speech and vote on all subjects, "except in so far as *the Government* in exercise of the responsibility which it feels towards *the particular question before Council* thinks it necessary to give them instructions." It would appear from the context that in respect of matters falling in the Transferred Half, instructions, if any, were to be given by the Governor acting with ministers. The Joint Select Committee made no reference to the suggested convention or to the proposal of the Government of India, but observed that official members, other than members of the Government, should be free to speak and vote as they chose.

The practice conformed to none of the sugges-

tions referred to above. In general, the official block was used to support the transferred side of government. The statement made² by the Leader of the House in the Madras Legislative Council on March 13, 1935 may be taken as indicative of the general trend. With reference to the attitude of the Reserved Half on the no-confidence motion moved against the ministry of the day, he said, "Government is going to be behind the ministry and it is going to employ its power to support their cause. That is in accordance with the precedents." In fact, ministers relied upon Government to maintain them in office when the majority of elected members were voting against them, as may be seen³ from the division on no-confidence motions in Assam, Bihar and Orissa, and Madras. It also frequently happened⁴ that the necessary supply for the transferred subjects and important legislation could be passed only with the help of the official votes. Thus during the years 1921-7 in 104 divisions on proposals relating to the transferred subjects in Bombay, the result in 30 would have been different but for the support of the official block ; the same is true of other provinces, though not to the same extent everywhere.

It must, however, be emphasised that the support of the official block for the Transferred Half could only be had if ministers asked for it, and if the Reserved Half were pleased to place it at their

disposal. Instances are on record⁵ where officials voted against a minister only because the minister had not asked for their support ; and again, if there was a difference of opinion between the ministers and the Governor in Council, officials voted with the latter,⁶ even when the officials were of the transferred departments, and where the subject related to a transferred department.

The practice with reference to the nominated non-officials was not in substance far different. In theory, of course, as the Leader of the House stated in Madras,⁷ they were free to vote according to their convictions, but, for various reasons, they did not feel free to vote as they liked. Reference has already been made to the fact that in Madras the members, nominated to represent certain classes, asked for election on the ground that they would feel free to vote according to their conviction. This was not only due to the fact that the Government took care to nominate 'safe' men. We have it on high authority⁸ that the nominations were sometimes made, as in the Bengal Legislative Council at any rate for a time, on the distinct understanding that those nominated would support the ministry. When a man is offered a nominated seat and he is told that he is given that seat on the understanding that he should vote for the ministers, his hesitation to vote otherwise can be understood. The Government could also refuse to renominate those

who had failed them. It would appear⁹ from the proceedings of at least one Legislative Council that it was the regular practice for Government to appoint whips to canvass support for them in the Council, for measures relating not merely to the Reserved Half, but also the Transferred. In one such instance the Government Whip told¹⁰ a nominated non-official quite plainly that it would be improper for him to vote against the ministry because the Government was supporting the ministry, and that, as a member nominated by the Government, he should support the Government. It is to the credit of the particular member that he refused to accept such an interpretation of the duties of a nominated member ; but it is also easy to see that the ordinary run of nominated members was only too likely to fall in with that view in the hope of keeping his seat thereby for another term.

In such circumstances, the desire on the part of the members of the Council, as expressed¹¹ more than once in open session, that officials and nominated members should not vote in respect of motions relating to transferred subjects, becomes understandable. It was of course admitted that they might take part in the discussions of the Council, to give them the benefit of their experience.

Notwithstanding some instances¹² to the contrary, it may be laid down as a general proposition that the ministers could expect the votes of the

nominated members—official and non-official—almost as a matter of course.

It was argued that this policy required little defence, because the policy was settled¹³ by the Government as a whole, and each half voted for the other ; the Government in the Transferred Half must go on, and could not go on without such aid. The official block supplied a steadying influence in government ; it was the counter weapon to obstruction as a policy followed by one party ; its existence made it possible to give support to a minister belonging to the minority community, who might not otherwise find it easy to maintain his position in the cabinet.

But a considerable price had to be paid for this: the knowledge that the ministers could count on the support of the official block weakened the tie between the ministers and the Council, lessened the sense of responsibility in the legislature and tended to throw them back on the simpler and more popular policy of opposition to official measures. A party which held the existence of a ministry in its power would systematically use it and support the ministry.

As it was, the ministers were regarded even in their own subjects as part of the official government, and encountered a hostility which possibly would not have existed if the ministers had been recognized to be wholly dependent on the Council.

II

PARTIES

To a parliamentary executive, the value of an organized party to support it cannot be over-estimated. It gives cohesion to its whole structure. Political parties are more or less organized groups of citizens, who are sufficiently interested in public questions to take an active part in trying to support a government ; they act together as a political unit and have distinctive aims and opinions on some or all of the leading political questions of controversy in the state ; they try, by acting together as a political unit, to obtain control of the Government. Parties are the only known means whereby a disciplined political army can be created capable both of presenting a coherent policy throughout the country at times of election and of ensuring reasonable stability to the executive Government, even when it is carrying through measures which may be unpopular in large numbers of constituencies. The return of unrelated individuals, however able, does not provide that steady majority without which a stable executive under a system of responsible government cannot exist.

But in India under the Montford Reforms party organization was still rudimentary. There were groups, and too many of them. The 100 elected members in the first Council in the United

Provinces (1921) were divided into the Progressive party with a strength of 36, the Landlord party of 45, Mahomedans 15 and the Europeans 4. The second council in Burma had the following groups.

Independents	.. 12 elected and 5 nominated members,
Golden Valley Party	.. 12 elected and 3 nominated members,
Nationalists	.. 28 elected members,
Swarajists	.. 5 elected members,
Home-Rulers	.. 11 elected members,
Non-party	.. 11 elected members,

Similarly in the Bombay Council there were the Swarajist-Responsivists, Mahomedans, Non-Brahmin Independents and Liberals. The Third Council in the Punjab contained four parties, the Nationalist—Unionist (Rural), the National Reform (Urban), the Sikh and the Nationalist parties.

Not merely were there too many of them ; the formation and dissolution or transformation of the parties were constantly taking place. Members belonged to one party at election time, but changed to another after election. Party organization too was, in general, weak. Instances there were, as in the United Provinces, where the party as such put up candidates on its behalf, prepared pamphlets

for circulation in their constituencies, arranged for election meetings and collected party funds ; in Burma the '21 party' appointed a standing committee to nominate candidates for the Council, plan and conduct the election campaign and lay down rules to regulate the conduct of successful candidates in the Council. Elsewhere party funds were used to subsidize newspapers which undertook to support their cause or to start one for the purpose. These party funds were made up by the levy of a subscription from members at a flat rate, or by donations ; more generally the leader and the more well-to-do within the parties financed them, with the inevitable effect of having a predominant voice in the counsels of the party. Within the Council, too, particular members were appointed¹⁴ to study different parts of the Budget and form a definite plan of attack ; priority as between members of the party was settled at party meetings. Parties also settled by mutual agreement their representation in committees.

But the general defect was that there were few settled principles or constructive programmes ; there were kaleidoscopic changes in complexion, leadership and policy. Above all, their roots did not go down into the constituencies. Indeed, the tie between the member and his constituency was weak. Constituencies were not nursed. Members did not make a practice of visiting them periodically

and of making speeches to their supporters ; they had little organized backing in the constituencies. They could hardly be said, indeed, to represent the adhesion of many minds to the same opinions.

THE SWARAJYA PARTY

From out of this rather sad picture, it is a relief to turn to an exception which undoubtedly shows what organized leadership could achieve for the organization of parties, and indeed for the development of the political consciousness of the country. The formation of the Swarajya party at Allahabad in February, 1923, under the leadership of Mr. C. R. Das definitely committed to Council entry, was a landmark in Indian political development. Up to that time a good part of the activities of the politically minded intelligentsia had been operative only in the wilderness of extra-constitutional effort ; now they were entering the Councils, though not with the object of working the constitution. Their aims and methods, their successes and failures are detailed elsewhere in this book ; in this context it is sufficient to say that they set¹⁵ an example of a political party, with a definite programme and an efficient organization. As the Bihar Government put¹⁶ it, " it is fair to recognize that in the entry of the Swarajya candidates into the Council, we have the first signs of the formation of a party system. . . . they may take credit

for their part in beginning the education of the masses in democratic government." The party had, besides its permanent committees for each group of districts and for each district, committees also in taluks and even villages. The whole organization was continuously active and not merely at the time of election. Through conferences and the press they kept up enthusiasm among their supporters. The leaders frequently toured through the districts. They issued leaflets and posters freely. Electoral addresses were also delivered. Use was made of magic lantern slides, depicting the poverty of India, important events of Indian history and some cartoons against loyalists and co-operators. Their party discipline, in general, was good: the Bengal government¹⁷ record that 'not more than one Swarajist candidate was put forward by any constituency.'

In an account of dyarchy, the importance of the Swarajya party lies rather in their attempts to destroy than to construct, and does not invalidate the general thesis that party organization as a factor in the working of the constitution was insufficiently developed. But while they were not themselves a party in the parliamentary sense of the term, the presence of such an extreme party as theirs served to stimulate the growth of parties in that sense. In the one legislature where the Swarajists possessed a clear majority, they termi-

nated the dyarchical system. Elsewhere, they devoted their energies as a rule to the construction of compact opposition blocks, and by their frankly expressed desire to render the working of the constitution impossible, they drove those members who did not see eye-to-eye with them politically to adopt some corresponding form of group organization in order to avoid submergence.

CAUSES

The successful working of parliamentary government of the English type requires the formation of two parties, and no more, each, in the words of Bryce, 'strong enough to restrain the violence of the other, yet one of them steadily preponderant in any given House of Commons.' Considerations of unity, stability and responsibility demand that the party in power shall be strong enough to govern with the support of an independent parliamentary majority. Similarly when it goes out, a party of equivalent strength ought to come in. Obviously this must mean two great parties, practically dividing the electorate between them. Any considerable splitting up of the people beyond this point is likely to result in the inability of any single party to command a working majority with the result that ministries will have to be based upon coalitions and consequently will lack unity and responsibility, and will suffer from instability. This is precisely

the situation in France and other countries, where there are a number of parties.

But in India, more often than not, conditions resembled those of France rather than England. With the exception of the Justice ministries in Madras and one or two others, it is doubtful if there were ministers under the dyarchic constitution who could count upon a stable majority in the Councils. Besides, what party organization there was was not coherent or well-knit. These defects cannot all be attributed to the dyarchic constitution. Political parties, it must be remembered, are groups of people who have common opinions on some or all of the leading political questions of the day ; the basis of union is agreement on ends and methods of achieving them. But it is clear that in India other factors played a prominent part. The anti-Brahman feeling ascribed to the practical monopoly of political power by the Brahmans brought into existence the Justice party, which for a long time did not even *pro forma* admit Brahmans as its members ; in many Councils, Mahomedans and Europeans formed self-contained parties. The origin of communal parties must be sought in the nature of the electorate, and the principle of communal representation, which gave statutory expression to the divisions in the electorate. After all the electorate is the mould in which the Council is cast, and that

electorate was marked by many cross divisions of race, religion and interest. These have obviously little connexion with dyarchy. They were in the main the result of social and political factors which are beyond the scope of the present discussion.

It may, however, be remarked, if only to give a true picture of the party organization in the country, that all parties were not purely communal. We have instances of parties which included within their fold members of different communities. The Swarajya party¹⁸ is an outstanding instance. The United Bihar party¹⁹ consisted both of Hindus and Mahomedans. The Nationalist Unionist party²⁰ in the Punjab is said to have consisted of Hindus, Mahomedans, Sikhs, Indian Christians and Europeans. Similarly members of the same community could be found distributed over several parties. Thus the Catholics were to be found²¹ in almost all political parties in Madras.

Parties again presuppose a certain mental attitude on the part of the citizens. Thus it is an established tradition in English public life that political differences do not mar personal friendship. There are two interesting letters quoted²² in the life of Asquith which are relevant in this connection. About 1909 the political differences between Rosebery and Asquith became acute and Asquith wrote: "Anything in the nature of political co-operation between us becomes (by your own show-

ing) the hollowest of pretence. It is with sincere pain that I write these lines, and with the assured hope that nothing will disturb our long and tried personal friendship"; and Rosebery wrote back to say, "I hope none of us could contemplate for a moment any diminution of our friendship by any political difference. . . . Of course our friendship must remain unaffected; it never ever occurred to me that it should be otherwise." The attitude indicated in these letters is almost a *sine-qua-non* for a healthy development of parties, for if the idea persists that membership of one political party may lead to the giving up of tried friendships, the inducement to seek that membership may not be strong.

Again the idea of party loyalty must develop. Party loyalty, it must be insisted, does not imply surrender of the individual conscience to party principles on all matters; but it must also be made equally clear that the idea of party is impossible if every member insists on every one of his opinions being accepted by his party. A party arises through agreement on fundamentals; in details one has often to give way for the larger issues in which members are agreed. But there were some in the country who were opposed in principle to the party system; as their memorandum put²³ it, "We are opposed to the party system, for under this system one is not unoften debarred from speaking the

truth, and until other members of one's party agree to one's view-point and make it a part of their programme, one is constrained to withhold a motion which one believes to be advantageous to the country." So long as individualism of this type prevailed, it is obvious, stable parties could hardly be expected to develop.

Loyalty to party principles, again, was hard to keep where the scramble for appointments was great. These appointments were of two kinds, paid, as in administrative and judicial departments, and honorary, as memberships and presidentships of local boards, education and temple committees, etc. Some of them were in the gift of ministers, and members are known²⁴ to have changed their political creed to gain the favour of ministers—a tendency obviously inimical to the stability of parties.

Parties suffered, too, from lack of adequate funds to start their own organs for publicity and propaganda.

These causes apart, there is a definite sense in which dyarchy as a system operated against the formation of parties in the true sense of the term. Under a system of responsible government, normally, ministers are at once heads of the government as well as leaders of the party or parties which command a majority in the legislature. The union of these two in the same persons is the con-

dition of the proper working of the party system and cabinet government in Britain. But such a union was rendered difficult under dyarchy. For ministers, on account of their close association with the Reserved Half, were considered by the legislature as part of an irresponsible government, and, therefore, were rendered suspect. The decision of the elected members of the Bombay and U.P. Legislative Councils to exclude ministers from an association, which they were forming, is a true index to the state of opinion in the Councils.¹ On their side ministers also found²⁵ it difficult if not impossible to give a correct lead to their followers: for, these followers would naturally want to know the ministers' position in the Cabinet in respect of matters in transferred as well as reserved subjects. Ministers, obviously, were not in a position to disclose confidential information.'

Again, members were elected on programmes which embraced not merely the subjects under the administration of ministers, but those under the Reserved Half as well; and an instructed elector judged the work of his representatives by what he did not merely in one field, but also in the other. It was quite likely that a member might be a supporter of the ministers in respect of subjects administered by them, but might take a point of view different from theirs in matters affecting the Reserved Half. But under such conditions, it is

obvious that party cohesion cannot grow. This was at any rate the experience²⁶ of Bengal. An ex-minister of that province has recorded that when he gave advice to his followers in matters dealing with reserved departments, there were some who took a different view from his, while they did agree with him in problems concerning the Transferred Half; and, on account of such differences, a split took place within the party. In so far as such differences within the party were due to the different attitude of members towards the reserved and transferred subjects, clearly, the system of dyarchy was a factor in the situation. The key to the whole position may be found in the fact that the minister's position was one of conflicting loyalties: "You have got to be loyal to your colleagues, you have got to be loyal to your chief, and you have got to be loyal to your party and this is an impossible position."

Again a study of the proceedings in Councils, and of the reports of Returning officers of elections leads the writer to the conviction that so long as full responsibility does not exist, it is difficult for truly political parties to grow. For the general impression among the people is unmistakable that there could exist only one party, viz., a party to oppose the government, the bond of union being the desire to wrest full responsibility before anything could be undertaken on the constructive side. The

dominance of that issue, unconsciously it might be in some minds, made differences on other issues recede into the background—those differences which should have been the basis for the formation of parties. Automatic opposition to government is not a political programme, but a state of mind, and there was no reason why members of councils should follow one leader rather than another. Definite programmes of social, political and economic advancement are necessary for parties to develop.

The ordinary voter also hardly found it possible to grasp the distinction between reserved and transferred subjects. An elected member of the U.P. Legislative Council, who kept active and continuous touch with his constituency, has left on record²⁷ his experience in this regard. "When we tell them," said he, "that the ministers are not responsible for it, and that it is a reserved subject, they look blank. They do not understand these things. They hear claims made of Indians having got a certain amount of power and the inconsistency between that claim and their power to take action in departments which vitally concern them, they don't understand." They considered the ministers as responsible for all the acts of the government. Their representative on the Council must be able to get certain things done. The villager put the question directly whether it was

in the power to effect a particular change in a particular subject, and the moment the answer was given that it was not in his power, then he lost all interest. "They ask," another member has recorded,²⁸ "Is it within your power, if I send you to the Council, to do this or that?' The moment you say that it is not within your power, they ask 'Why have you come to me?'" Without that interest and the confidence in getting certain things done through the legislature, political parties can hardly emerge.

The effect of these causes was accentuated by the particular way in which dyarchy was worked. The practice followed by Governors, except perhaps in Madras for some years, of choosing their ministers as individuals from the Legislative Councils, without particular regard to the consideration of a common policy and the failure of ministers themselves, in general, to observe the principle of collective responsibility were clearly against hastening any development of the party system. The existence of the official block and its effect have already been alluded to. In particular it prompted the tendency on the part of the non-official members to vote even against their own ministers because they were sure that the official and nominated group would save them, and that they would gain a certain amount of popularity with the people with whom they came in contact by taking a line

which was anti-government. It affected party development in another way. Under conditions of parliamentary government, the party system can develop only where the executive is removable by an elected majority. But when the majority could not succeed in doing this, on account of the existence of the nominated block, the people had no incentive to organize and consolidate the party system; owing to the absence of such incentive, the parties formed were not powerful or well-knit.

The roots of party go to power—the possibility that when once called to office the ministers chosen from them can *do* something in virtue of that power. But when ministers were not really powerful, even in their own departments on account of the over-ruling powers vested in the Governor, the strengthening of party ties was difficult. This particular difficulty was enhanced by the financial stringency which prevailed all through the period of the Reforms, and which made it impossible without increased taxation to allocate sufficient funds to the transferred departments to enable ministers to present an attractive programme and secure systematic and united support. The ministers had not much of patronage either, or titles to distribute to followers—an inducement necessary in the early days of party organization to bring men together in parties.

CONSEQUENCES

The results of this absence of well-organized parties were manifold. As ministers, when they accepted office, could not generally count upon a steady support to their policy, much of their attention which should have been devoted to the considering, and the carrying out, of useful policies in their respective departments was given to securing support from unrelated individuals and groups of elected members, or where such support was insufficient, from nominated members ; it thus resulted in an undue importance being given to the nominated block, which surely was not intended by the framers of the constitution. Again, to secure more following, ministers were compelled to resort to dubious ways, resulting in a large amount of nepotism and corruption. A classic instance of this formed the subject matter of discussion²⁹ in the Bengal Press ; another,³⁰ of open mention in the Madras Legislative Council. The ministry were insensibly drawn into the arms of the Reserved Half, and the position of that Half in government was made much smoother by this alliance than what otherwise it might have been. Indeed, as the Bombay Government pointed out,³¹ it is probable that if the ministers had organized parties of their own, and relied entirely on them for support, and were guided by their wishes on all important matters, they would have had constantly to oppose

the Reserved Half of government, with the result that the latter would have been repeatedly defeated in the Council and deadlocks would have resulted.

The appointment of ministers became a difficult task ; for in the absence of a party, the Governor was mainly guided, in his choice of ministers, by the intrinsic worth of the members, the position they held in public life and the necessity of representation of the main communities in the ministry. Indeed it was governed by no recognized principle; in one province, it was found³² more convenient to provide the leader of the strongest party in the legislature with a seat in the Executive Council and not in the ministry.

There was, besides, a good deal of waste ; for, schemes for the betterment of people were prepared and completed under the instructions of one minister ; then political circumstances came which made the minister abandon³³ the schemes. If organized parties existed, they would have maintained some continuity between the policy of the same ministry at different times as well as of different ministries of the same party. When a ministry carried on without a working majority in the legislature, it inevitably resulted in weak administration. That check on the executive, provided in a normal parliamentary government by the existence of a responsible opposition eager to

defeat the party in power and thereby place themselves in office, was also lacking. Further, the absence of clear-cut parties, with their internal discipline, resulted in many provincial legislatures functioning rather as collections of individual critics, who did not separate in their own minds question of policy and questions of administration ; but trespassed more and more upon the functions of the executive. The debates in the legislatures were also characterized by frequent repetition of the same arguments. The existence of disciplined parties can give a direction to parliamentary debate hardly possible without them.

Finally the absence of stable parties exercised an unfortunate influence on the growth of ministerial responsibility. The idea that a ministry, collectively, should be responsible to the elected majority of a legislature was hardly developed. As indicated elsewhere, the spectacle was witnessed first of ministers pursuing divergent policies, and secondly of ministers remaining in office, while the majority of elected members voted against them.

III

GENERAL ATTITUDE

The normal attitude of the legislature towards the Transferred Half may best be illustrated from the following experiences³⁴ of an ex-minister : The

Council as a whole appreciated the difficulties of ministers, and showed itself willing to help them. Personal criticisms were few, criticisms being confined to what were considered their sins of omission and commission. There was of course the militant section which pretended to wonder how any self-respecting and patriotic Indian could accept the office of minister under the dyarchical constitutions, but they did so out of no ill-will towards those who had accepted the office, but only as a protest against the constitution. In all measures conducive to the public good, the ministers generally had the support of the members irrespective of their political creed. The Council of course often made recommendations which the ministers did not approve or could not carry out for want of funds or for other reasons. There was naturally a sense of irritation. But the ministers were always anxious to give effect to their wishes. If they could not always do so, it was because as practical administrators they often saw disadvantages or difficulties which were not clear to the ordinary members. "To criticize is one thing, to act is another ; and this is nowhere more forcibly exemplified than in the fact that an ordinary member when he becomes a minister undergoes a sort of metamorphosis in his mental outlook."³⁵ Attempts were made from time to time to reduce the salary of the ministers but they were, apart from the desire to wreck the constitu-

tion, the outcome of a desire to effect economy and not to spite them.

Briefly, the attitude of the Councils was sympathetic. This is evidenced nowhere more clearly than in the readiness³⁶ of the Councils to grant all the money asked for by the transferred departments. Few ministers had difficulty in getting their budgets passed through the Councils. In budget discussion the commonest criticism of the departments relating to the Transferred Half like Industries or Education was that too little was provided for them, while too much was taken up by the reserved departments. "We ought to give our ministers all the facilities they require," said³⁷ a member of the Bengal Council, "and hold them to their own ideas and tell them: 'we have given you everything you ask for, and if you have not done anything, we do not want you to remain in office any longer.'"

Even cut motions were moved to compel the government to make a more liberal allowance in the budget to improve the service represented by the demand under which the cut motions were moved, for instance, the improvement of roads and of rural sanitation, the opening of more schools, etc. Others were to record the opinion of the Council on matters like Indianisation of the services, which in fact were beyond the power of the ministers, and could not, therefore, be considered as an attack on

ministers themselves. The large percentage of motions withdrawn shows the extent to which the Council and ministers enjoyed mutual confidence. Thus in Madras³⁸ during 1921-9, 368 out of 459 budget motions or 80 per cent. were withdrawn ; and in 89 motions opposed by Government, they were successful in 76, i.e., 85 per cent. These figures bear comparison with those relating to the Reserved Half, the percentage withdrawn was only 66, while in 206 motions opposed by government, they were successful only in 115, i.e., 56 per cent. The Transferred Half were defeated only in 15%, the Reserved Half in 44%. As pointed out elsewhere, it could be said that, as a general rule, expenditure in the Transferred Half was passed if it satisfied the criterion of desirability, while on the reserved side, it had to satisfy the criterion of necessity.

In the Central Provinces³⁹ the same tendency can be noticed. During the years 1921-9, excluding the two financial years 1924-5 and 1926-7, which were marked by abnormal conditions, the cuts tabled in reserved departments were 614 ; out of these 100 were passed or 16% ; in the transferred side, 394 were tabled but only 8 per cent. were passed. In the reserved side the reductions made by the Council amounted to 2 per cent. of all demand, while in transferred departments the reduction made by the Council was only .5 per cent.

of the demand.

Another proof of the same interest in, and sympathetic attitude towards, the administrative activities of the transferred departments is that they were prepared to agree to additional taxation, if the proceeds thereof were to be spent in transferred departments. All increase in existing taxation or the imposition of new taxation was of course generally viewed⁴⁰ with disfavour. This attitude is best expressed in a speech⁴¹ delivered on the floor of the Assam Legislative Council : " that minister will be a popular minister, that minister will enjoy the confidence of the people who can with very much less taxation give us the necessaries we want. That minister is certainly a failure who would tax and tax to give us what we need." But the only way by which the Government could disarm opposition⁴² was to undertake to spend the proceeds from additional taxation on departments under the control of ministers, such as education and public health ; and the discussions on the Budget show that the members sometimes insisted on this condition before they would agree to the new tax.

It is interesting to note that the Councils in time realized that this was a bad bargain ; for, what guarantee was there that the proceeds of the new tax would in fact be used for developing transferred services ? It is true that Government sometimes undertook⁴³ to keep a separate account for the sums

so raised and to place the account annually before the Council, so that the Council could satisfy themselves that the money had been so spent. But even then there were difficulties. Such undertaking was invariably accompanied⁴⁴ by the reservation that in the event of unforeseen contingencies such as famine, they might find it necessary to divert the funds ; and again, was it not likely that Government could decline to provide adequately for some transferred department from the common revenue, and ask for increased taxation in order to find funds for it ? That this danger was real may be seen from a token motion⁴⁵ carried in the Assam Council condemning the Government for making the provision for rural water-supply dependent upon the passing of a taxation bill. "This is a sort of coercion . . . ", argued a member,⁴⁶ " . . . when it is a question of water-supply, they bring in all these conditions and coercions."

SYMPATHETIC CRITICISM

Criticism there was but generally of a helpful and constructive nature ; governments have themselves acknowledged⁴⁷ the constructive nature of many of the criticisms. These were often prompted by the natural desire of members to expedite progress in what were called 'nation-building departments'—in regard to such vital matters like public health and education ; to accelerate the rate

of Indianisation of services ; to reduce the suffering such, for instance, as was involved⁴⁸ in the discharge of a number of employees consequent on the adoption of the photo-copying system in the Registration department ; to enquire if materials used in Government departments could not be purchased in the home market ; to find ways and means by which the immediate inconvenience caused to the villagers, for instance, by forest restrictions could not be avoided or mitigated by a sympathetic application of the rules or by putting an end to the petty exactions of subordinate officials, etc. Similarly, a suggestion to consider the possibilities of the encouragement of indigenous systems of medicine, which were at once more popular and less costly, and to improve them by providing a body of registered practitioners with recognized qualifications could not be considered a hostile one. Rather, it was a legitimate desire on the part of an elected council to give expression to the felt needs of the people whom they represented. Other suggestions of a similar nature made in the Councils were the desirability of encouraging certain aspects of education neglected in the previous regime, such as music and vernaculars, the necessity to introduce vocational education, physical and military training, etc.

RESULTS

The result of the generally helpful attitude taken up by the Councils is noteworthy. Ministers were able to embark on a policy of expansion in departments like education and public health, or of restriction as in excise with fair assurance that it would be warmly supported by the legislature. Sometimes the initiative⁴⁹ itself came from the Councils, and the matter was taken up by ministers ; indeed, there are instances⁵⁰ where ministers waited for the initiative to come from the Councils, and then they acted according to the Councils' wishes. There was an all-round increase in the interest taken in the activities of the transferred departments. The Bengal government speaks⁵¹ of 'the remarkable change for the better in the attitude of the people towards public health' and the U.P. government⁵² of the 'sustained interest' taken by the Council and the people in excise administration and in matters of education : 'the transfer of education has given it publicity and roused non-official interest.'

THE RIGHT PERSPECTIVE

The general attitude of sympathy of the Councils towards the departments under the control of ministers must not, however, be attributed entirely to the fact that they were transferred. It is true that this was to some extent responsible for crea-

ting that attitude. Words and phrases have a mysterious way of reacting on men's attitude towards things; 'responsible government' is one such. The fact that a department was transferred was itself a letter of credit; the demands made by it should receive sympathetic consideration. But, in part, this was due to two other causes, whose influence should not be under-rated. The transferred departments were also what were known as nation-building departments, concerned with those social services in the provision of which every modern state has been making headway. The influence of the conception of the 'positive' state, however feeble it was, was bound to make itself felt. Also it happened that these departments were precisely those in which the previous regime had made least progress, and therefore much leeway had to be made up almost in every province. What could be more natural than the desire of an elected council to promote those services, and to support all proposals calculated to improve them?

This aspect of the matter is made clear in another way. The fact that a department was reserved did not necessarily mean opposition to it. Witness the attitude of legislative councils towards the Irrigation department noticed in an earlier part of our discussion.⁵³ It is true that the department of law and order was the most attacked, and that this was reserved. But this attack, it would

appear, dates from an earlier period, and was due to other causes than that it was a reserved department. The records of legislative councils since 1910 are⁵⁴ full of debates or resolutions to increase the grants for education and sanitation. The speakers did not always consider where the extra money was to come from ; but if it had to be found by reducing expenditure on some other service or department, then the police were nearly always selected as the victim. Again, it was not true that every transferred department got uniform support. This may be seen from the discussions relating to the Public works department. This department provided two sorts of services : it was in charge of the construction of roads and bridges, as well as buildings for government departments. The latter, invariably, found little sympathy with the Council, while the former received better support, because it was considered as a ' nation-building ' activity.

The second cause was that the demands for grants relating to the reserved departments, even though rejected by the legislature, could be restored by the Governor ; not so, normally, in respect of the Transferred Half. This consciousness was present, and was a sign that the lesson of responsibility was slowly being learnt, however imperfect the learning might have been.

COUNCIL SECRETARIES

To popularise ministerial policy and to smoothen the relation of ministers with the Council, the device of appointing Council Secretaries from among members of the Council was tried in some provinces, though not with uniform success. The duties of the office, as detailed in a Government order ⁵⁵ published at the time, were such as to approximate it as closely as possible to that of the parliamentary private secretary in England. In Madras⁵⁶ the Council Secretaries are said to have been of considerable assistance to ministers ; they sat on select committees ; helped towards the passage of measures ; replied occasionally on behalf of ministers to resolutions and motions on the budget ; kept ministers in touch with the opinions of different sections of the Council, in particular with their party opinion and secured the vote of the ministerial party for proposals relating to transferred departments. It is rather curious that the institution of Council Secretaries could not thrive in any other province. In Bombay, Bihar and Orissa, Assam and Bengal,⁵⁷ there was no real demand for it ; the Central Provinces and Burma⁵⁸ tried it, but felt it did not serve any purpose ; the United Provinces and the Punjab⁵⁹ tried and gave it up. In these provinces it was felt that it was but a vote-catching device ; it was suspected that these members by accepting office became for all practical

purposes government members and as such were bound to vote with government. Thereby the non-official majority was reduced, so far as voting was concerned. Further, so long as the permanent Secretaries of government and the Heads of departments were also members of the Legislative Council, Council Secretaries had little to do; besides, the office and the salary offered failed to attract the best men to take up the work in right earnest. The nature of these objections and the difficulties experienced, coupled with the experience of Madras, suggest the thought that in a council where there are no nominated officials, and where the salary offered and the conditions of work are such as to attract the best men, who are also good parliamentarians, the device of Council Secretaries is not entirely without value in smoothening the relations between ministers and the Council and in affording a training ground for future ministers; but under such conditions as generally obtained in this country, it proved, in general, of doubtful value.

IV

ENFORCING RESPONSIBILITY

While the general tone of the legislature was distinctly sympathetic, there were occasions when the councils felt it necessary to express their disapproval of the policy of ministers and to censure

them. It is of the essence of a system of dyarchy that the ministers should be responsible to the Council in those matters transferred to their control. Before 1924, the provincial councils could control the action of the ministers by means of legislation, by motions of adjournment and resolutions, by refusing them supplies and by moving the reduction of their salaries. The Reforms Enquiry Committee considered these provisions inadequate and recommended that the provincial legislative council rules should provide for three classes of motions :—

- (a) a motion of no-confidence ;
- (b) a motion questioning a minister's policy in a particular matter ; and
- (c) a motion for the formal reduction of a minister's salary to be moved at the time when the demands were made for grants.

So far as the first two motions were concerned, in order to prevent them from being moved frivolously and to provide that they should come up for discussion at an early date, the committee also said that the rules should provide that the person who gave notice of the motion should show that he had the support of about one-third of the members of the Council, and that, in that case, the President was to direct that the motion should be included in the list of business on a date not later than 10 days after the date of notice.

The first motion, if carried by the Council, should necessarily involve the resignation of the minister, or of the whole ministry, if it held itself to be jointly responsible in regard to the particular question. But the carrying of a motion falling within the second class was not necessarily to involve the resignation of the minister. It must depend upon the magnitude of the question at issue and the importance which the minister attached to his policy in regard to it. Rules on these lines were accordingly made in the provinces.

The most frequently used method in the councils to express disapproval of the ministry was the reduction of salaries ; this raises interesting questions relating to the idea of wrecking the constitution and is discussed later. Refusal of supply *in toto* or of very large amounts was part of the same programme and is referred to in that context. These apart, on several occasions, ministers were defeated on votes for reduction of grants, but these were not regarded as implying want of confidence. Defeats on resolutions also sometimes took place, but were also not generally treated as implying want of confidence. Thus on February 27, 1923 a resolution was moved in the U.P. Legislative Council recommending the establishment of a university at Agra. The ministers opposed it and were supported only by 9 and opposed by 31 non-official members, and, in spite of the support of some offi-

cial members, they were defeated in the division. After the division the minister in charge explained that he did not propose to treat the vote as one of no-confidence, as the Council would very soon have an opportunity of showing lack of confidence on the vote for his salary, an opportunity which, it may be added, was not made use of. Similarly ministers were defeated on bills. Thus a Punjab minister found⁶⁰ himself at variance with his Council on the Urban Rents Bill, but the Governor advised that it was not one on which constitutionally he should resign. In a good number, ministers were successful only because of the support of the official block,⁶¹ the majority of elected members voting against them.

NO-CONFIDENCE

No-confidence, motions were moved several times. Apart from the desire to wreck the constitution, there were the clash of personalities, the change in the relative positions of groups, the supposed injustice to one or other class in the community, the inefficiency of ministers, and their sins of omission and commission. But one cause looms large in such discussions in the Council, and has a special significance in relation to dyarchy, viz., the attitude of the ministers towards reserved subjects. The Council expected⁶² the ministers to side and vote with them in all matters relating to

reserved subjects, and in particular their attack on the police and the remission of land revenue. It would appear as if it was a condition of their popularity that they should differ from the Reserved Half and the Services. Thus in Bombay⁶³ the ministers were asked to bring to the notice of the Government the intense feeling of resentment in the province against the 'ordinance bill' then introduced in the Council and two significant queries were put to the ministers: "Do our ministers know that owing to the compelling influence of the ministers in the Central Provinces, the Government did not even dare to introduce such a Bill in their Council? Do they know that in the Central Provinces, the ministers always depend on their own following and never vote with the Government, except when they agree with them?" Briefly, the ministers could hope to enjoy the goodwill of the Council if their attitude regarding reserved subjects, as expressed in open Council by speech and vote, coincided with that of the Council. If they voted against the majority of the elected councillors, as the Bengal ministers did on a resolution relating to the release of political prisoners,⁶⁴ the conclusion was drawn that they did not deserve the confidence of the Council. This conclusion was of course not according to strict constitutional theory; and Sir Henry Wheeler took pains to explain⁶⁵ that theory

to the assembled Councillors. This was perhaps unnecessary, for the position was too simple for the Council to be ignorant of it. Their argument was based⁶⁶ on somewhat different grounds. The Instrument of Instructions directed the Governor to encourage joint deliberation so that the knowledge of the ministers as to the wishes of the people might be at the disposal of the Executive Councillors ; and, further, it directed that in considering the minister's advice due regard should be paid to their relations with the Legislative Council and to the wishes of the people as expressed by their representatives therein. Suppose a question was discussed in the Council, the outside public or the Council had no opportunity of judging the attitude of the ministers except by their open vote in the Council, and if the ministers voted against the majority in the Council, or even remained neutral, the Council would naturally conclude that the ministers were with the Reserved Half, and against the legislature, passively if not actively. In such cases the ministers, according to the Council, were not fulfilling *part* of their duties properly ; for, the ministers were in the Cabinet as *their* trusted representatives. While their primary responsibility according to the letter of the constitution was only in respect of transferred departments, it was argued that in a secondary sense and according to the spirit of the con-

stitution, the ministers' advice to the Reserved Half in respect of reserved subjects should also be in accordance with the wishes of the legislature.

There were, no doubt, flaws in the argument. The direction in the Instrument of Instructions that, in considering a minister's advice, the Governor should have due regard to his relations with the Legislative Council, tacitly though not expressly, referred only to his advice in respect of transferred subjects. The supposition that neutrality on the part of ministers was in effect a sign of their lack of sympathy with the view-point of the Council arose from a lack of appreciation of the difficulties of a minister who was told by the Joint Select Committee not to vote or speak against the Executive Councillors. The argument that the advice of ministers in respect of reserved subjects should reflect the views of the Council, while no doubt a sound maxim of policy, was not sufficient to justify censure on the ministers who, under dyarchy, were not free to reveal to the legislature their actual part in the administration of the Reserved Half. But it is the logic of facts, not theory, that counted ; it was difficult for the Council to think of *their* ministers in two different capacities. A trend like this had clearly been anticipated⁶⁷ by an intelligent witness before the Joint Select Committee : "Possibly," said he, "the ministers who are elected, under the scheme before us, are

more likely to be judged by their attitude to the reserved subjects than they are by the subjects which they have to look after themselves."

Again it was a charge against the ministers that they did not act together as a unit and did not depend on their own following, but on the nominated group, for support. In moving⁶⁸ that a humble address be presented to the Governor to reconstitute the ministry in Bombay, one of the complaints against the ministers was that ministers worked on the lines of least resistance and in the grooves chalked out for them either by the Reserved Half or by the able body of civilians ; their *unconstitutional alliance* with Government and two or three other groups in the House assured a compact majority for Government, ready to vote for them on all occasions and in all conditions irrespective of the merits of the question.

As it was, the Council felt that as soon as ministers were appointed, they lost their services for the popular cause. "They are not in a position to side with us", says a member of the Bombay Legislative Council, "and go against the Government when a division is called for. These appointments are made from among the leaders of the public, and I think their services are more required on the popular side than on the ministerial bench."

The ministers' position was surely unenviable. There was an inherent conflict in that position.

As members of the Government, they could not disclose confidential information, and tell the Council what advice they gave to the Reserved Half on a particular matter : there was a distinct ruling⁶⁹ by the President of the Madras Legislative Council in this regard. "I will not allow any member or minister," said he, "to interpellate in regard to the relations between the two halves of the Government, nor can I allow any Member or minister to furnish that information." When divisions were called, they could at best remain neutral on matters relating to the Reserved Half; but as popular representatives they were expected to give visible expression to their sympathy with the attitude of the Council ; neutrality was as good as hostility. Was not this conflict clearly envisaged by the distinguished authors of the Reforms ? Said they,⁷⁰ "it is our intention that the decisions of the Government should be loyally defended by the entire government, but that the ministers should feel responsibility for conforming to the wishes of their constituents. It is true that these two forces may pull different ways ; but there are occasions when members of a government have to choose between loyalty to the government and to their own constituents."

The position was made worse by the fact that, as noticed already in the foregoing pages, ministers had not always the necessary following in the Coun-

cil to make them independent of the Reserved Half. The Council wanted the ministers to be independent of the Reserved Half and to depend on their own following, but they would exclude ministers, as they did⁷¹ in Bombay and in the United Provinces, from an association of elected members !

No-confidence motions were, of course, ostensibly based on the alleged want of confidence in the policy of ministers ; a catalogue of their ' sins of omission and commission ' was made out in support, more often⁷² of individual ministers rather than of the ministry as a whole. It is significant, however, that, barring a few instances⁷³, which were avowedly based on the desire to wreck the constitution, few of these were passed. In a good number⁷⁴ the victory of the ministers was due to the backing of the Reserved Half and of the nominated members.

LEGAL RESPONSIBILITY

So far we have dealt with the responsibility of ministers to the legislature. It is relevant here, briefly, to refer to a curious anomaly in the Government of India Act which divorced ministerial power from legal responsibility. A section of the Act⁷⁵ said that a minister was not subject to the original jurisdiction of any High Court by reason of anything counselled, ordered, or done by him in his public capacity. The section is in fact reminiscent

of the days of Warren Hastings when there was a sharp conflict between the Governor-General and his Council on the one hand and the supreme Court on the other, and it was considered necessary, in order to get rid of this conflict, to enact that the Governor-General and members of his Council should be exempt from the jurisdiction of the supreme Court. Later this exemption was extended to members of the Executive Councils in the provinces and ministers. It is true, as Lord Sinha was careful to explain⁷⁶, that they were responsible to every other court in the country including that of magistrates, and also to the High Court in its appellate jurisdiction ; and that the limited exemption enjoyed by them was applicable only to Madras, Bombay and Calcutta. But on an impartial analysis the student is bound to hold, even while agreeing that no serious inconvenience has resulted therefrom, that there was no justifiable reason, either on grounds of constitutional law or equity, to extend such protection to ministers. Its unjustifiable nature was forcibly pointed out at the time by Prof. Keith in a letter to the *Times*,⁷⁷ only to be told⁷⁸ that it was not unjustifiable. The plausible reason suggested was that an invidious distinction could not be maintained between ministers and Executive Councillors. It was tacitly forgotten that the exemption granted to Executive Councillors was a relic of the past, no longer justifiable in

itself and totally inapplicable to Indian ministers ; the latter's power obviously rested on a different basis from that of Executive Councillors. While ministerial responsibility to the legislature was only in the making, and while the legislature had not yet become fully conscious of its implications, a safeguard like full legal responsibility should, on all grounds, have been retained. It is difficult to believe that ministers themselves would have claimed such a protection as was conceded to them by Parliament.

V

WRECKING THE CONSTITUTION

Reference has already been made in an earlier paragraph to the formation of the Swarajya Party, with the avowed aim of 'wrecking the constitution from within'. What was the real origin of this organized attempt to wreck the constitution ? What were the methods used by the party to achieve their purposes ? How far were they successful in their aims ? An analysis of dyarchy to be complete must include both the effort to work as well as to wreck it.

There is no doubt that the system of dyarchy itself encourages the latter tendency. The introduction of dyarchy is an admission that the people concerned are fit for *some* responsibility ;

it is an easy step to argue that they are fit for *more*. The demand is made ; if that demand is not complied with, it is worth while making an attempt to destroy the existing system with a view to wrest greater powers. It is thus a method, within the framework of the constitution, to wrest greater power by exposing the weakness of an existing political system. That this is true is evidenced by the demands⁷⁹ made in the several provincial councils as well as in the Indian Legislative Assembly, within three years of the introduction of the Reforms, for complete responsibility in the provinces. The arguments employed by the Swarajya party,⁸⁰ when they actually attempted to destroy the constitution, also show that the theoretical background of their methods of obstruction was the avowedly unsatisfactory character of dyarchy as a political system ; the feeling there was that the country was fit for, and should have, complete responsibility in all provincial subjects.

But this by itself is not sufficient explanation. Destroying the constitution from within is not a method which can be applied only to a dyarchic one. Nor is it again necessarily inherent in the dyarchic system ; as a matter of fact dyarchy was in operation in several provinces, and was not destroyed. The origin of the attempt to wreck dyarchy in some Indian provinces is in fact intimately

connected with the course of Indian politics since the passing of the Rowlatt Act. That Act led to the Punjab disturbances of 1919 and to the Amritsar tragedy. To the racial bitterness thus engendered were added the economic struggles of post-war adjustment. In the meanwhile, the scheme for constitutional reforms had been announced. To a people whose expectations, on account of their honourable part in the Great war, were very high, the scheme appeared inadequate and unacceptable. There was the bitter resentment of the Mahomedans over the Khilafat question. The remarkable personality of Mahatma Gandhi gathered together the threads of unrest and evolved a design for the destruction of the existing system of Government. The movement of non-co-operation was thus begun in 1921 ; the arrest of its leader on March 10, 1922 brought about a lull. One of the planks in that movement had been a boycott of the Councils, as an expression of resentment against government. But with the decline of non-co-operation, differences of opinion naturally emerged as to the efficacy of council boycott, and a council-entry party was formed under the leadership of Pandit Motilal Nehru and Mr. C. R. Das, both of them well-known for their sacrifices on behalf of the country. Both the 'No-changers' and the 'Pro-changers' tried to capture the Congress machinery for their purpose. In the

Gaya Congress in December 1922, the no-changers were in a majority and were successful in persuading Congress to re-affirm its faith in boycott and declining to allow Congressmen to contest the elections.

But the failure of the non-co-operation movement had its effects in creating an atmosphere favourable to the pro-changers; they had only to bide their time. Throughout 1923, the Swarajists steadily gained ground at the expense of the no-change party. In the special congress at Delhi on September 25, 1923, they gained a notable victory; the programme of council entry was approved and the Swarajists received permission to contest the elections. But the point must be stressed that they secured such permission, and also the privilege of using the name of the 'Congress' with all its prestige, only because council entry was put forward as a method to destroy, not to work, the constitution. It was only another method to achieve the old object, *viz.*, to put an end to the existing system of government and to gain Swaraj. They issued a party manifesto in which they laid stress upon the fact that they were entering the Councils in order to ensure that the existing constitutional machinery should not be exploited for anti-national purposes. As their leader in the Bengal Council put it,⁸¹ they entered the Council with the object of either putting an end to the pretence of Government that they

carried on the administration with the consent of the people, or so mending the system of government as to make it accord with the declared wishes of the Indian National Congress. "Our policy," said he, "is based on the principle that tyranny, open and frank, is sooner destroyed than tyranny clothed with hypocrisy which makes people forget that there is tyranny at all." With this view they intended to present an ultimatum to Government demanding the right of the Indian people to control their own destiny. In the event of the demand being refused, the party pledged itself to a policy of uniform, continuous obstruction with a view to make government through the Councils impossible.

This brief survey brings out the fact that the plan of destroying the constitution from within was in part due to the failure of council boycott and the failure of the non-co-operation movement generally. But for the energies released by that movement, and its failure, it would be difficult to account for the marked success the party achieved in winning the elections in 1923, and its consequent success, limited though it was, in achieving its aim. In that election the success of the Swarajists in two provinces was marked. In the Central Provinces they enjoyed a clear majority over all other parties. In Bengal they represented the strongest individual group and with the aid of a coalition could hope to get a working majority. In Bombay and the

United Provinces they were returned in considerable numbers. In Madras, the Punjab and Bihar and Orissa, they were comparatively weaker.

CENTRAL PROVINCES AND BENGAL

The methods employed by them to achieve their object may be illustrated from the two provinces where they were strongest. In the Central Provinces, the Swarajist leaders refused to accept office; and then they proceeded to vote down every Government measure indiscriminately. They carried a vote of no-confidence against the ministers, and followed this up later by fixing their salaries at the handsome figure of Rs. 2 per annum! When the Budget was presented they refused all the supplies which it lay in their power to vote. The Governor's special powers were employed to restore almost all the items in reserved departments, and the 'essential services' in the transferred departments. But since the Council had refused to vote salaries for the ministers, the office of minister could not be filled, and the Governor took over the administration of the transferred subjects under the powers vested in him by the Transferred Subjects (Temporary Administration) Rules, and continued thus until it became clear that no ministry was likely to be formed. This position was reached during the budget session of March 1926,

when the provision for the salaries of ministers was refused finally by the Legislative Council. The sanction of the Secretary of State was obtained⁸² for the suspension of transfer of all provincial subjects with effect from April 20, 1926 to January 31, 1927. In January 1927 the Responsivists accepted office.

In Bengal, the Swarajists succeeded in forming a coalition with an Independent party. With their help, they succeeded in throwing out from the Budget important demands for grants and refused to grant salaries to ministers. This happened more than once⁸³; the result was from August 28, 1924 to March 13, 1925 and again from March 26, 1925 to June 12, 1925 there were no ministers in Bengal. As in the Central Provinces the sanction of the Secretary of State was obtained for the suspension of the transfer of all provincial subjects from June 13, 1925 to January 21, 1927, and they were administered by the Governor in Council as reserved subjects. In the new Council which met after the election of 1926, the same trouble was experienced, there being no ministers from August 29, 1927 to October 11, 1927, and from February 22, 1929, to December 17, 1929. During these months again, the Governor administered them under the powers vested in him under the Temporary Administration Rules.

REFUSAL OF SALARY

The history of dyarchy in these two provinces shows that apart from spectacular methods like the 'walk-out' and social boycott, the main weapons employed by the obstructionists were the refusal to accept office, the refusal of supply, no-confidence motions and the refusal to vote salary for ministers. This last raised a significant constitutional issue, to which a reference may be made. The issue briefly stated was this: the intention of Parliament in giving the Council the right to vote the salary of ministers was that the choice of ministers should rest with it; but in effect this power enabled it to vote on the question whether there should be ministers or no ministers. "The ministers are nothing but the outward symbols of the system," said the Swarajist leader,⁸⁴ "so that the real object behind my motion (to refuse salary for ministers) is to put an end to the system itself by doing away with its symbols." Was the Council constitutionally right, therefore, in refusing salaries for ministers *in toto*?

A difficulty like this seems to have been anticipated by the constitution-makers; for, the Joint Select Committee had considered⁸⁵ the idea of making the term of ministers independent of the vote of the legislature. The *Despatch* of the Government of India contained⁸⁶ a suggestion from the Bihar Government that the salary of the minister should be retained as a reserved subject. But the

balance of advantage was definitely in favour of the provision actually adopted, and therefore these other suggestions had been given up.

The issue was raised in a prominent form by the Bengal Government in the memorandum supplied by them to the Reforms Enquiry Committee. They suggested that it was probably never contemplated that the Council would refuse to grant any salaries to the ministers, and if it was not intended that the Council should have the power of preventing any ministers being appointed, some amendment of the Act was required either to restrict the limits within which the salaries of the ministers might be fixed, or else to give the Governor, the power to authorize the expenditure on the salaries of ministers. The Government of Bihar and Orissa also referred to this point in their memorandum. The Reforms Enquiry Committee recognized the force of these contentions and recommended that the Act should be amended to provide that a minister of a province should ordinarily receive the same salary as a member of the Executive Council in that province ; that power should be given to vary by an act of the local legislature the salary fixed by the section so that it was not to be less than $\frac{3}{5}$ of, or more than, the salary payable to a member of the Executive Council in that province ; and that the section should provide for the making of rules to enable a formal reduction of a minister's

salary to be moved at the time of the demands for grants as a method of criticizing his policy. No action was taken on this recommendation.

But one remark on this issue may be made. It could be argued that if the ministers' salaries were protected by statute, and therefore, their rejection could not be used to put an end to dyarchy, a determined council might as well refuse supply and thus end dyarchy. Therefore, why protect salaries in order to prop up dyarchy? While theoretically this argument appears sound, the experiment of Bengal, at any rate, makes one pause before accepting it. There the obstructionist party found it difficult⁵⁷ to throw out the demands for transferred departments; they found it easier to throw out the demands for ministers' salaries. The explanation is this: when the demands were thrown out, that reacted on the people; when the effect of the vote began to be felt in, for instance, a number of government employees being thrown out of their jobs, and generally in the suspension of the services provided by the 'nation-building' departments, there was considerable dissatisfaction among the public. Public opinion made itself felt, and, therefore, on a later occasion, the party helped to restore the demand. Even an obstructionist party must ultimately depend on the support of public opinion. That public opinion may approve its ultimate aims, but may not be prepared to put up with the

immediate inconvenience caused to the life of the people by such drastic action as refusal of supply. Clearly, the refusal of ministerial salaries was a much more harmless weapon, and therefore more easily resorted to by a party determined to obstruct. The protection of such salaries was, therefore, likely to be a stabilising factor in a dyarchic constitution.

VI

TEMPORARY ADMINISTRATION

The rules for the temporary administration of transferred subjects have been referred to more than once in the foregoing discussion. They were the provision made for administering these subjects in cases of emergency, where, owing to a vacancy there was no minister in charge of transferred subjects. The Governor, in such cases, was authorized either to appoint another minister who was available and willing to take charge of the subjects temporarily ; or if the vacancy could not be provided for in this manner, to administer them himself. He could then exercise in relation to such subjects all such powers, in addition to his own powers as governor, as he could exercise if he were the minister in charge thereof.

Only three conditions and restrictions were laid on the Governor. He had to certify that an emergency had arisen in which owing to a minis-

terial vacancy, it was necessary for him to take charge of transferred departments, and had to forward a copy of such certificate for the information of the Governor-General in Council ; such temporary administration was to continue only until a minister was appointed to administer the subjects ; and the Governor was not to exercise in respect of such subjects the power of certificate of legislation granted to him by a section of the Act in relation to reserved subjects.

During the period of such administration in Bengal, though the Governor was himself responsible for the administration of the transferred subjects, actually, he appointed the members of the Executive Council to act as his agents for the different departments, their orders being subsequently submitted to him for confirmation.

The Council's powers in relation to such subjects during the period of temporary administration were necessarily less. That was, at any rate, the experience⁸⁸ of Bengal. As there was no minister responsible in charge of the subjects, it would appear, no questions relating thereto could be asked ; even the right to move resolutions and the introduction of private bills relating to them were restricted.

It may perhaps be argued that the rules framed for the temporary administration of transferred subjects were inadequate in some respects. Could

the Governor, during the period of temporary administration, initiate a policy which the previous ministry had disapproved, without the prior sanction of the Legislative Council? Again to whom was the Governor-minister responsible for the administration of the transferred subjects? The rules gave no clear indication, unless forwarding a copy of such certificate (that an emergency had arisen) for the information of the Governor-General in Council is taken to imply that the Governor was accountable to the Governor-General in Council in respect of temporary administration. They only declared that the Governor could exercise all such powers as he could if he were minister. The minister was normally responsible to the Council; that Council, by assumption, was not in a mood to *have* and to control a minister; and even if it was in such a mood, it could not enforce its control against a Governor-minister. A temporary emergency may justify the temporary administration of a transferred subject by a Governor; but sufficient safeguards should be provided against a possible abuse of power.

SUSPENSION AND REVOCATION OF TRANSFER

The principle behind the suspension and revocation of the transfer of subjects is different from that behind Temporary Administration. The latter was based on the hypothesis that

ministers might be found, within a reasonable period, to administer the transferred subjects. When that hypothesis was disproved by the continued unwillingness of the Legislative Council to vote ministerial salaries, the procedure was to apply for sanction, through the Governor-General in Council, to the Secretary of State for the suspension, and if necessary the revocation, of the transfer. When such suspension or revocation took place, the subjects were administered as reserved subjects were administered, *viz.*, by the Governor in Council. We have seen that suspension had to be resorted to in the Central Provinces and Bengal on account of the continued obstruction by the Swarajist party.

VII

THE COUNCIL AND THE GOVERNOR

In relation to transferred subjects, the Governor had some powers given to him by the constitution. Normally he was expected to abide by the decision of the legislature in respect of bills or demands for grants passed or rejected by it. But in emergency, he could override its decision. Thus when *any* bill or any amendment to a bill was moved or proposed to be moved, the Governor could certify that the bill or any clause of it or the amendment affected the safety or tranquillity of

his province, and could direct that no proceedings could be taken. Similarly in emergency he had the power to authorize such expenditure as was in his opinion necessary for the safety or tranquillity of his province or for the carrying on of *any* department. In addition, he could veto a bill, send it back for reconsideration or reserve it for the consideration of the Governor-General.

These wide powers were meant to be only reserve powers ; the less frequent their use, the better. It may be said that in this regard, broadly, the spirit of the constitution was followed by the Governor. There were no doubt stray instances of authorization of expenditure,⁸⁹ reservation of bills⁹⁰ for the consideration of the Governor-General and veto of bills,⁹¹ but these do not invalidate the general proposition that the Governor, in general, rarely interfered with the discretion of the Council.

CHAPTER IX

CONTROL FROM ABOVE

In a study of dyarchy in practice, we are primarily concerned with the mutual relations of the Transferred Half and the Legislative Council in the provincial government. But these provincial authorities were not left entirely to themselves to administer provincial affairs: they were to a greater or lesser extent, subject to the control of the Government of India and the Secretary of State. A proper perspective of dyarchy requires some account of their control, and for this reason: that control was one of the factors which prevented the clear definition of responsibility on which the educative value of responsibility depended. As it was, for various reasons, the legislature and the electorate were unable to clearly fix the responsibility for the transferred subjects on the ministers. The control from above in legislation, administration and finance added to this difficulty.

I

THE GENERAL PRINCIPLE

The governing principle in this relationship has been made clear elsewhere: in the departments transferred to popular control, unless extra pro-

vincial or Imperial interests were concerned, the control of Parliament, of the Secretary of State and of the Government of India should be reduced to a minimum, but in those departments which were reserved and which were, therefore, not subject to popular control, superior official control could not legally be limited on the sound principle that no government in India could remain free, on the one hand, of control of Parliament, and on the other, of control by a legislature in India.

Accordingly, while rules were made under the Act¹ limiting the control of the Secretary of State and the Governor-General in Council over the transferred departments to specified purposes, in regard to reserved subjects, practice and convention were left to establish how far control should be relaxed, not by restriction or devolution, but by delegation and by mere disuse. It was felt that the specification by rules of certain grounds for the exercise of powers of control might be taken to imply the exclusion of others, and this was unwise when the Central Government was held accountable to the Parliament for their proper administration.

II

RESERVED SUBJECTS

The legal position in respect of reserved subjects may now be stated. Control from higher

authorities was of three sorts, legislative, administrative and financial. These aspects are not mutually exclusive ; for example, administrative control could be exercised through legislation, and also through financial regulations. But they can be distinguished in a general way, and it will make for clearness if we deal with them separately.

THE SECRETARY OF STATE

The control of the Secretary of State over legislation was indirect, and exercised through the Governor-General, to whom the provincial governments were directed to refer certain classes² of bills for previous sanction for introduction in their legislative councils. The Secretary of State laid it down³ that in such cases the Governor-General might consult him before deciding on his course of action in respect of any such bills ; and, in any case, should refer to him for instructions any bill to which the Governor-General proposed to withhold his sanction.

Administratively, the Secretary of State had a general power of superintendence, direction and control, vested in him by, and subject to, the provisions of the Act.⁴

His control over finance related mainly to borrowing and expenditure. Every loan to be floated outside India required⁵ the sanction of the Secretary of State in Council. He had power⁶ to

control the expenditure of the revenue of India, subject to the provisions of the Act, and the rules made under it. With regard to reserved subjects the Joint Select Committee considered it unnecessary to incorporate in the devolution rules the extent to which the Secretary of State in Council was prepared to delegate to provincial governments control over expenditure on them. They recommended that such delegation should be by means of executive orders made in virtue of the power conferred by the proviso to a section⁷ in the Act. These orders were later contained in a Resolution⁸ of the Secretary of State in Council commonly known as the Provincial Audit Resolution. They provided that expenditure, of certain defined classes, on reserved subjects was not to be sanctioned by the Governor in Council without the sanction of the Secretary of State in Council, and that when such sanction was necessary it must be obtained before the Legislative Council was asked to vote supply to meet the expenditure. These classes included the pay and allowances of all-India services, revisions of establishment involving annual expenditure exceeding a certain limit and capital expenditure upon irrigation and navigation works including harbours, and the utilization of water power when the original estimate exceeded Rs. 50 lakhs.

THE GOVERNMENT OF INDIA

The legislative control of the Government of India was exercised partly by the requirement regarding the previous sanction⁹ of the Governor-General to certain classes of bills, partly by the reservation of certain classes for his consideration, and partly by the need for his assent before a bill became valid. Thus previous sanction was necessary for a bill imposing a tax other than that exempted by the Scheduled Taxes Rules, or dealing with matters which had been declared to be the concern of the Central Government, for instance, Universities and High Courts. Examples of bills which had to be reserved are those affecting religion or religious rites, bills providing for the construction of light and feeder railways, and bills which had the effect of including within a transferred subject matters which had been classified as a reserved subject. When a bill was so reserved, the Governor-General might either assent to or withhold his assent from it, or he might reserve it for the signification of His Majesty's pleasure ; and in this case, it had no validity until His Majesty in Council had signified his assent. Even when the Governor-General had assented to a bill, His Majesty in Council could disallow it.¹⁰

In the administrative sphere, in theory they had,¹¹ as the Secretary of State had, an unlimited power of superintendence, direction and control.

Supervision may be taken to relate to the whole group of matters in which the Central Government became aware of provincial activities ; direction, the extent to which they co-ordinated activity, besides the issue of general instructions ; control, their action in checking or managing the activities of a particular province. In all three classes, again, such exercise of power might rest upon antecedent legislation, or on express statutory provisions, or it might be purely executive.

In finance, the previous sanction of the Governor-General in Council was necessary in cases where provincial governments desired to supplement their revenues accruing from specified¹² sources of revenue placed at their disposal. Every loan to be taken or floated in India required the sanction of the Government of India, and an application for a loan to be raised outside India, sent to the Secretary of State, had to be submitted through the Governor-General in Council.¹³ Over expenditure they had practically little independent control¹⁴ ; they could merely offer their advice or their comments in forwarding schemes for the sanction of the Secretary of State, except for grants in an individual case of an increase in pay or for the creation or extension of temporary posts.¹⁵

The local government had also no right to the custody of its own balances. They were kept for it by the Governor-General in Council, who acted as

the local government's banker, and employed the excess balances for his own purposes. In case of a financial emergency, he could refuse to allow a local government to draw on its balances. He could further require provincial governments so to regulate their programmes of expenditure as not to reduce the balance at their credit below a stated figure, and to make their orders effective by the restriction of issues of moneys to secure this end.¹⁵

RELAXATION YET NECESSARY

It is, however, necessary to stress the fact that some limitation of this control in reserved subjects as well, although only by convention, was an essential part of the theory of dyarchy. While dyarchy existed, no doubt, the Reserved Half was not constitutionally responsible to the elected legislature; but they were amenable to its influence. In the administration of reserved subjects, the Governor in Council was expected to take into account his relations with the Legislative Council and with the ministers who formed the non-official side of his government. Though special procedure was provided to secure legislation and to obtain funds for reserved subjects when the proposals of the Governor in Council did not meet with the approval of the legislature, it was obviously desirable that a Governor should not resort to this special procedure if he could reason-

ably avoid it. Unless this factor was recognized in the relation between the Governor and the higher authorities to whose superintendence, direction and control he was responsible, the Governor might be placed in an embarrassing position.

It is this factor which explains the general direction¹⁷ in the Instrument of Instructions to the Governor-General to be vigilant that the policy set forth in the preamble to the Act of 1919 was furthered by his government, and in particular that the superintendence, direction and control over the local government was normally to be exercised with a view to furthering the policy of the local governments, especially *when such policy found favour with a majority of the members of the Legislative Council of the province.*

In the light of recent instances¹⁸, it is perhaps necessary to stress the fact that the wishes of the legislature formed only one factor in the situation. The assent of the legislature would of itself be no reason, why the Government of India should approve a local government's proposals to which it saw strong objection, nor would the dissent of the legislature be of itself a reason why the Governor-General should withhold his sanction to the provincial law.¹⁹

There is another consideration. Dyarchy is admittedly a transitional government, being a partially responsible one ; it must some day give place

to a wholly responsible government. That obviously implies that the authorities in the provinces must then be independent of external official control ; the relaxation of the control from above in reserved subjects, even while dyarchy continued, would make the transition gradual and smooth.

THE PRACTICE

In practice, the experience of provincial governments, as might be expected, was not uniform. In the opinion of some of them,²⁰ these powers, theoretically reserved to the higher authorities, were nearly always dormant in practice. The only important exercise of such control, which, it may be added, they did not consider unreasonable, was during the non-co-operation movement, and in respect of communal troubles. Indeed, on occasions some of them,²¹ especially the less developed, would have welcomed a more drastic use of the Central Government's powers than was actually made.

Other provinces have a different story to tell. Briefly it would appear that, in the exercise of their statutory powers of control, the Secretary of State or the Government of India did not always pay sufficient regard to the relations of the local government with their legislature, as they should have done in practice if the work of the local government was to be carried on in an atmosphere of harmonious co-operation. This statement must,

however, be qualified in two respects—first, the Government of India's direct intervention was more frequent than that of the Secretary of State ; and second, this complaint applies more to administrative control than to the legislative or the financial.

The complaint about legislative control was mainly in respect of the previous sanction clause, the exercise of the Governor-General's powers of assent, dissent and reservation of bills causing little difficulty. This particular form of limitation had, as the Committee on Division of Functions recognized,²² the unfortunate effect of inviting the judgement of the Government of India upon a provincial bill before they had the guidance which could be obtained from a public discussion of its terms. On the other hand, as the provinces had in theory the right to range over the whole legislative field, it was essential that they should be under such effective restraint in the exercise of this right as would suffice to keep them off certain portions of the field altogether, and to place their entry into other portions under strict control.

It has been contended by provincial governments that in practice almost any bill of importance had to be submitted for previous sanction under the Act, for there are few projects of legislation which do not directly or indirectly touch civil rights and liabilities, and these were a central subject, on

which provincial legislation was subject to previous assent. In the exercise of their powers of superintendence, direction and control, the Government of India had also issued their executive instructions to the effect that bills relating to reserved subjects, not requiring previous sanction under the Act, should also be submitted to the Government of India for their observations, if, in the opinion of the local government, they were of sufficient importance. The provisions of the Act regarding previous sanction and these executive instructions were held to apply not only to the original introduction of bills, but also to the submission of amendments, whether proposed by a select committee or otherwise, the President of at least one legislative council disagreeing with this view.²³ Loud complaints were heard before the Reforms Enquiry Committee that in the early years of the working of the reformed constitution, the Government of India were exceedingly meticulous in the application of these provisions, and appeared to the provincial governments to strain to the utmost their powers of control. We are even told²⁴ that this attitude was deliberate and intended to help the provincial governments to realize the true position and accommodate themselves to it. While many governments agree that sanction was not unreasonably withheld, in practice there was delay and inconvenience, especially to non-official bills, and the control was

considered irksome. Also it is relevant to note that it was open to the Government of India, and the opportunity was, though only sparingly, used²⁵ to operate the requirement of previous sanction so as to refuse assent to measures or provisions which seemed either politically or administratively inconvenient. Finally, at least in one case, the refusal of sanction led to an unforeseen difficulty for the local government: ²⁶ non-official members of the legislative council opposed *another* measure on the ground that this was incomplete without the other.

But there is another side to the picture. Part of the delay resulted from bad drafting in the provinces. Where sanction was refused to non-official bills, in many instances the refusal was in accordance with the recommendation of the local government;²⁷ in the later years, with experience on both sides, less delay and inconvenience were caused; and finally, provincial governments²⁸ have themselves admitted that the advice of the Government of India or the examination in regard to sanction revealed important defects; speaking generally, their suggestions were useful. The resultant delay and inconvenience were justified by the Government of India on account of the constitutional relationship which made the Government of India ultimately responsible for the reserved subjects. It is interesting to know that they themselves had suggested an amendment²⁹ to

section 80-A(3) of the Act to make for elasticity and admit of a progressive advance in the relaxation of the requirements imposed by law.

The final assent was, in most instances, given without comment ; the few instances³⁰ where the Governor-General did refuse his assent show that the power served a useful purpose, and could be exercised only when there was a strong, expert and educated public opinion in favour of dissent.

ADMINISTRATIVE CONTROL

Now to administrative control. According to some provincial governments,³¹ neither the Secretary of State nor the Government of India at the outset fully appreciated the delicate position in which the provincial governments were placed. We have it on record that Sir Harcourt Butler's government in the United Provinces was seriously embarrassed by directions from both these authorities when attempting to get the very controversial Oudh Rent Bill through a hostile legislature. Not that there was any question of the legal right of those authorities to give directions, but the feeling of the local government was that in the particular case the right was exercised in a manner which showed a lack of appreciation of the local position. The difficulty of that position obviously arose from the fact that the Governor in Council was, on the reserved side, bound to obey the orders of the

Government of India and the Secretary of State, being under their superintendence, direction and control, while, on the other hand, he could only act in certain matters with the co-operation of a legislature which owed responsibility to no higher authority and was jealous of its own dignity and resentful of external interference.

It is but just to add that other instances are on record which show that the Government of India did take into account the relation of the local governments with their legislatures: thus the Government of India, on one occasion,³² asked the Government of the United Provinces to reform its jail administration, but when it appeared that the provincial legislature would not vote the heavy expenditure which this reform would involve, the Central Government did not proceed to the extreme of insisting that the necessary funds should be demanded from the legislature, and, if necessary, certified by the Governor.

The most frequent cause of trouble, however, in the administrative side arose from the obligations imposed upon the higher authorities to protect the rights of the Services. It is perhaps sufficient to say, in this context, that, under the circumstances, conflicts of opinion between the legislative councils and the higher authorities in regard to such protection were inevitable.

In finance, according to the Punjab Govern-

ment³³, the fact that the form of public accounts was prescribed by the Secretary of State made for an exercise of control which was, to some extent, embarrassing. Indeed, as the Indian Statutory Commission puts it³⁴, the exercise by the Centre of its powers of superintendence, direction and control, and of interpretation and adjustment offered a ground for greater conflict of interest in finance than in general administration. This was specially true, so long as the provincial contributions according to the Meston Settlement lasted. A decision made in favour of one province was considered inequitable by another, and the most effective means of reaching harmony on broad principles was found to be through the annual conference of finance members. It is, however, interesting to note that in their claims as against the Centre, the provincial governments had generally³⁵ the warm support of their legislative councils.

III

TRANSFERRED SUBJECTS

In respect of direct legislative control, no difference existed between reserved and transferred subjects. In the administrative and financial spheres, on the other hand, there was a clear differentiation. Broadly, this consisted in the limitation of control over transferred subjects by rule to specific purposes.

THE SECRETARY OF STATE

By rules made under section 19-A of the Act, the Secretary of State limited the exercise of his powers to safeguard the administration of central subjects and Imperial interests, to decide questions arising between two provinces in cases where the provinces concerned failed to arrive at an agreement, and to enable him adequately to discharge his duties in respect of the services, borrowing and the High Commissioner. In financial matters, the rules³⁶ declared that the previous consent of the Secretary of State in Council was necessary for the creation or abolition of permanent appointments ordinarily held by members of all-India services, or on a maximum rate of pay exceeding Rs. 1,200 a month (or in Burma Rs. 1,250 a month), for the creation of temporary posts carrying a salary exceeding Rs. 4,000 a month and for the grant of allowances and pensions not admissible under rules framed under section 96-B.

THE GOVERNMENT OF INDIA

The administrative control of the Government of India was by rule restricted to three specific purposes, viz., to safeguard the administration of central subjects, to decide questions arising between two provinces in cases where the provinces concerned failed to arrive at an agreement, and to safeguard the due performance of the duties imposed

on the Governor-General in Council by certain sections³⁷ of the Act.

In finance, the Government of India had practically little independent control over the Transferred Half. They could merely offer their advice or their comments in forwarding schemes for the sanction of the Secretary of State, except for grants in an individual case of an increase in pay or the creation or extension of a temporary post.

By a rule³⁸ made under the Act, the Governor-General in Council had power, with the previous sanction of the Secretary of State in Council, to revoke or suspend, for such a period as he considered necessary, the transfer of all or any provincial subjects in any province.

Finally, the Transferred Half, in common with the Reserved Half, were bound to furnish to the Governor-General in Council from time to time such returns and information on matters relating to the administration of their subjects as the Governor-General in Council required³⁹ and in such form as he directed.

The obligation to supply information was not empty formality; in their *Fourth Despatch*⁴⁰, the Government of India considered it as 'one of the fundamental conditions of a dyarchic system'; it was argued such a system could endure only so long as it was safeguarded by Parliament, which must therefore be in a position to obtain any information

which it required whether on a transferred or a reserved subject. The authors of the *Montagu-Chelmsford Report* took the same view⁴¹. The Government of India further thought⁴² that it was essential in order to enable them to safeguard their own subjects, direct the administration of the reserved subjects, guide the Governor in his relations with ministers, maintain the rights of the Public Services and ensure that sufficient material was forthcoming for the Statutory Commission. They disclaimed any intention to use the information so obtained for the purpose of executive interference to any further extent than was justified by the principle already discussed.

THE PRACTICE

Soon after the introduction of the Reforms, Parliament imposed upon itself a convention to have self-restraint in the exercise of their undoubted powers of control. The famous ruling⁴³ given by the Speaker of the House of Commons on February 23, 1921 is illustrative of this: "I have come to the conclusion that, having started upon this new departure of granting a measure of self-government to the provinces of India, it is highly undesirable that this House should interfere in any way with the control by those provincial legislatures of their own affairs. The ministers who are selected by the provincial governments . . . are responsible to the Legislative Councils of those provinces, and even if

this House were to pass some censure, either direct or indirect, upon such a minister, it would be futile. Therefore, upon this question of transferred subjects, I still hold that there is no right of interference by this House." As the Under-Secretary of State put it before the House of Lords⁴⁴, in a statement made a fortnight later, Government in India under the new system would be absolutely impossible, if Parliament, by virtue of its ultimate responsibility for the welfare of India, were to interfere in the administration of subjects which it had transferred to local governments as represented by the Governor and his ministers, and if it were to seek to make Indian ministers responsible to itself in detail as well as to their own Governors and their own Councils. Parliament must be content, he thought, to limit its legal right of pulling up the young plants to see how they were growing. We may add that this convention was in keeping with the suggestion⁴⁵ in the *Montagu-Chelmsford Report* that in respect of all matters in which responsibility was entrusted to representative bodies in India, Parliament must be prepared to forgo the exercise of its own power of control, and with the declaration of Montagu⁴⁶ in the House of Commons on 5th June, 1919: "so far as transferred subjects are concerned, we shall have parted with our trusteeship and surrendered it to the representatives of the people of India".

This declaration was undoubtedly authoritative ; provincial councils felt the beneficial effects of freedom from superior control : witness the statement of a Governor in the Bengal Legislative Council with reference to the administration of transferred departments:⁴⁷ "Between you and me, neither the Viceroy nor the Secretary of State nor the Imperial Parliament can intervene in such matters."

THE SECRETARY OF STATE

The influence, however, of the Secretary of State was felt in regard to the services. Members of services recruited by the Secretary of State and serving in the transferred departments had the right of appeal to the Secretary of State ; it is an anomaly of dyarchy that ministers had to administer transferred subjects in some cases through an agency which they could not themselves select and over which they had not full control. Instances⁴⁸ are on record where the legislative councils backed up a decision of the minister against that of the Secretary of State ; but, as explained elsewhere, this was perhaps inevitable under the circumstances.

The control of the Central Government in respect of legislation in the transferred sphere, it has been pointed out, was, as compared with that in the reserved, restricted to specific purposes ; but even this limited control, especially the necessity for pre-

vious sanction, irritated the ministers. This irritation is partly explained by the inevitable delay caused by the reference to higher authorities; especially in the department of local self-government, it was found that practically every extension of municipal and local board work involved the limitation and regulation of private rights and required the sanction of the Governor-General, because it touched, at some point, the central subject of civil law.⁴⁹

Partly, however, it was due to the attempt of the Government of India, through their power to refuse previous sanction, to control policy⁵⁰ in respect of transferred subjects, which should have been left to the local councils and to ministers. Thus in a university bill before sanction was given for introduction, the Government of India tried to prevail upon the minister concerned to insert a clause, to which he was opposed, regarding the recognition of university degrees. No doubt the suggestion took the form of advice but it was, as the ministers complained, advice given by a party who had the power of stopping legislation at any stage, and was resented. The ministers were placed in a difficult position and could gain their point only by showing that they were ready to resign. It must be admitted that such instances were not the rule, but the possibility of their occurrence was a factor to be taken into account.

A study of the cases of interference with the local governments in the administration of transferred subjects shows that the power was mainly used to decide matters in which more than one province was interested but none by itself could decide, and to protect central interests and the Services. Thus in Excise conflicts of interest between the Central Government and Provincial Governments arose⁵¹ owing to the fact that under the then prevailing distribution of resources, the customs duty on imported liquor went to the central revenues, while the fee for the privilege of selling the same liquor, whether in wholesale or retail, went to provincial revenues. Provinces tried by various devices, not only to encourage the sale of 'country-made foreign liquor' to the detriment of the sales of imported liquor and of central revenues, but also to tap what was really a central source of revenue by levying in the guise of vend fees or transport fees what was really an addition to the Customs duty on imported liquor.

The safeguarding of the rights of the Services was again a fruitful cause of trouble. It is natural, as the Punjab Government put it,⁵² that ministers should claim some voice in the choice of officers for posts so important as those of the Surgeon-General and the Commissioner of Excise; and when they were not allowed to nominate, or their selection was not paid heed to, they grumbled. Promotion of

officers to selection grades in certain services gave rise to trouble and the appeal by discontented officers to the Government of India created piquant situations. An Indian officer of the I.E.S. was promoted to the selection grade in supersession of certain senior officers. One of the officers superseded appealed to the Government of India. As a result of his appeal, the Governor acting with his ministers cancelled the previous orders.⁵³ The minister had to justify his final orders in the case before a hostile legislature which by an overwhelming majority signified its disapproval. Not a single non-official voted with the minister!

The Centre also co-ordinated provincial activities. Examples are the giving of advice to provincial departments of forest, public health, agriculture and education, and the summoning of conferences in Delhi to discuss matters of common interest, the work of the Imperial Council of Agricultural Research and the revival of the Educational Advisory Board.⁵⁴ In particular, such action was determined by the participation of India in International conventions⁵⁵ such as those of the International Labour Office.

The co-ordination, of course, was not complete. Thus in Excise matters, with the inauguration of the Reforms, both the producing and the consuming provinces were empowered to collect and retain the revenue obtainable from excisable articles trans-

mitted from one province to another. As undesirable rivalry might arise between provinces in this matter, a general agreement was arrived at—that duty should follow consumption, but the Governments were at liberty to renounce this agreement.

That the Government of India also from time to time took the liberty to suggest the policy that ministers should adopt in regard to their departments is clear from a confidential circular addressed to Local Governments dated Nov. 23, 1934⁵⁶: “The Government of India recognize that the development of village industries is a transferred subject but they trust that ministers will agree to carry out the policy indicated.” This was specially true when the Government of India had reason to suspect that developments in these departments might ultimately lead to political agitation and breach of the peace.

From the point of view of dyarchy, the noteworthy features of the superior control are two:—first the control of the administration of the transferred departments by the Central government was not exercised to secure improvements in administration, for instance, to reduce illiteracy in a given area. That duty was placed by the Act in the Governor acting with the ministers, controlled by the elected council. And secondly, in so far as the restrictive powers possessed by the Government of India were in fact exercised by a government, not

constitutionally responsible to the representatives of the people in the Indian legislature, the principle of dyarchy was considered by the ministers to be inoperative. They gave expression⁵⁷ to this point of view before the Reforms Enquiry Committee. The powers of superintendence, direction and control by the Government of India over transferred subjects in legislative, administrative and financial functions were really exercised by the bureaucracy ; the Indian legislature could not therefore assume any responsibility for the powers of control possessed by the Government of India. To this extent the ministers thought they were dependent on the bureaucratic half of government and that the principle of dyarchy remained inoperative.

PART III
SOME CONCLUSIONS

CHAPTER X

AN ESTIMATE

I

INTRODUCTORY

Dyarchy is a novel experiment ; the results of its working for the last sixteen years would, it was expected, enrich political experience. Are we, then, in a position, in the light of our survey, to draw useful lessons concerning the merits and defects of dyarchy as a political system ?

One preliminary question may at once be raised and answered. Was dyarchy worked in the way it was intended to be worked ? It is difficult to give an answer couched in general terms ; the variety of ways in which it was worked in the different provinces makes such a general statement impossible. In a sense, it may be argued, this variety itself was anticipated by the framers of the constitution, and perhaps welcomed, as affording valuable experience in the light of which the system, if need be, could be reformed. This apart, our survey suggests that, while the general outline of the dyarchic constitution was maintained, in important details, the intention of the constitution-makers was not always adhered to. The intention of the framers of the con-

stitution had been that ministers, chosen from a popularly elected legislature, should normally be free to act in certain subjects of government, and should clearly, and collectively, be responsible for their action to the elected majority of the legislature. But in many provinces, the idea of corporate responsibility of ministers to the elected majority in the legislature was found difficult to realize in practice. The general absence of party organization, the presence of the official and nominated block and the existence of communal electorates combined with the desire of some ministers to stick to their job at all costs were mainly responsible for this state of affairs.

In this respect, therefore, there was a clear departure from the intention of the constitution-makers. But this was not true of all provinces. In a few provinces like Madras, the Central Provinces and the United Provinces, although only for some years, ministers were prepared to act on the principle of joint responsibility, and were prepared to resign when they had lost the confidence of the elected majority of the legislature, or when they felt they had been over-ruled by the Governor in a manner inconsistent with their responsibility to the legislature. The existence of some kind of party system, though not strictly political in character, the public spirit of the ministers concerned and the lead given by the Governor explain their success.

Again, it was clearly laid down by the Joint Select Committee, and by speakers in Parliament, that joint deliberation between the two halves of government, while necessary to secure harmony, should not lead to 'common decisions'. There was to be unity in deliberation but not in decision. Experience justifies the remark that this was not always adhered to.

Indeed in no province was the system of dyarchy worked for the whole period exactly in the way it was intended to be worked. This is a factor of some significance. In any constitution departures from original intentions occur; in dyarchy, this has occurred to an extent which raises the doubt if it demands impossible conditions. This apart, the variety of conditions, under which dyarchy was tried, is, of course, a feature of great value to the student.

II

DEFECTS

It is a remarkable fact that in all the discussions relating to dyarchy, extending for well-nigh a decade, it has had few friends. Even when the scheme was on the anvil, its supporters could only defend it as a better one than other alternatives; at best it was the least harmful under the circumstances. Lord Curzon could be taken as fairly representative of this type: "I abominate the sys-

tem of dyarchy", he said ; but he acquiesced in it because he considered there was no other alternative. To one Secretary of State¹, it seemed a kind of pedantic and hide-bound constitution, to which the Anglo-Saxon communities had not generally responded, and which in his anticipation was unlikely to suit a community whose political ideals were so largely derived from Anglo-Saxon models. Its opponents considered it unsound in principle and unworkable in practice. After it had worked for some time its defects began to be more generally perceived. A Governor of an Indian province said that dyarchy was 'a cumbrous, complex, confused system, having no logical basis and rooted in compromise' Lord Lytton's experience perhaps best expresses the general sentiment on the matter. "My experience was", said he², "that the Reserved Half of Government was disliked, but that it was respected, whereas the Transferred Half of Government was not only disliked, but it was despised". No wonder the terms³ used in common parlance to describe dyarchy were not very respectable: it was styled, 'political bigamy' and 'diehardarchy'.

ASSUMPTIONS PROVOCATIVE

The general state of contempt into which dyarchy has fallen is due to several causes : but of them none is more important than that its assumptions

are provocative. Dyarchy is obviously based on distrust—the distrust of the capacity of a people to govern themselves; vital matters like law and order, and land revenue, which intimately touch the life of the people are not handed over to popular control. Sir John Rees put it⁴ in a rather provocative analogy when he said that they could not be allowed to run, while they could not be trusted to walk without help.

It may of course be argued that it is at any rate better than the state of things prior to it, because the introduction of dyarchy is an admission that people can be trusted to govern some subjects; in other words that dyarchy is based on trust rather than distrust. In fact dyarchy is a double-edged weapon; it may be used both ways. But here again in practice what counts is how a proud people, beginning to be self-conscious, looks at things. It is the tendency of human nature to magnify the evil and belittle the good, when it suits its purposes. Precisely because the system implies, in one part, an admission of the people's fitness for self-government, the other part, based on a fear of incapacity of the people, is considered unwarranted and is resented; the sooner it is removed the better. The argument is no doubt fallacious from the purely rational point of view; but the possibility of such demand is inherent in the system itself; and it is difficult to see how any

reform of the system could make it more palatable. The resentment against the system expresses itself in a variety of ways, but in particular in the persistent opposition to the Reserved Half. This opposition is seen in the rejection of grants for the Reserved Half, in irresponsible criticisms of its acts, and in the unwillingness of the legislature to agree to new taxes for the benefit of the reserved departments. The sense of opposition is increased by the fact that it is unreal : members of the Council know that even though they reject bills or demands for grants, the government will nevertheless go on as usual, and the people will not suffer. They know that the Governor's power of certification will be used. Such opposition may increase in intensity on account of the tactlessness of the Executive Councillors. Witness, for instance, a scene in the Bengal Legislative Council : " Sir Henry Wheeler (an Executive Councillor) . . . called us irresponsible ;" cries out a member,⁵ " and today, he has been followed by some of his followers with the same expression ; and the climax has been reached by Mr. Barton. He has said that the motion was quite ' senseless '." An infant Council is jealous of its dignity, and tactlessness on the part of Executive Councillors only invites further opposition.

The general attitude of resentment expresses itself in other ways as well, for instance, in attempts

at boycott of the Councils, and at wrecking the constitution from within. The temptation for striving to overthrow it and making it out to be an impossible half-way house is indeed great. In so far as the constitution contains safeguards to prevent the elected representatives from exercising full control even in respect of the Transferred Half, it is liable to be resented as not being a real measure of advance, but a sham. Those who are pledged to oppose government are more popular; the others are described as 'government's friends', timid and office-seeking. Wrecking the constitution appeals to race prejudices and nationalistic sentiment. It is easier and more popular. The realization that such difficulties were inherent in the dyarchic constitution led, at one stage,⁶ to a rather curious suggestion, *viz.*, that members should take an oath that they would work the constitution! It is sufficient criticism to say that the line between obstruction and legitimate opposition is difficult to draw.

FUNCTIONS OF GOVERNMENT OVERLAP

The theory of dyarchy is based on the assumption that in a certain field of government ministers and the legislature are free to initiate, decide upon and carry out a policy of their own. This is possible only if, in respect of these, the impact of the Reserved Half can altogether be dispensed with or

reduced to the minimum. In practice this is impossible. Every bill which contains penal clauses touches on a reserved subject inasmuch as such clauses cannot be enforced without the intervention of the courts and the police. Bills dealing with sanitation, compulsory vaccination, compulsory education, prohibition and similar subjects are useless without penal clauses. Finance and administration are intimately connected, and almost every important question of policy in the Transferred Half has to be referred at one stage or another to the Finance department which is itself a reserved one. The anticipation⁷ of the Bombay Government in this regard has proved remarkably true :—

“A reference to the records of Government will show that there is scarcely a question of importance which comes up for discussion and settlement in any one of the departments of Government which does not require to be weighed carefully in the light of considerations which form the province of another department of Government. The primary duty of the Government as a whole is to preserve peace and order, to protect the weak against the strong, and to see that in the disposal of all questions coming before them the conflicting interests of the many different classes affected receive due attention. And it follows from this that practically all proposals of importance put

forward by the minister in charge of any of the departments suggested for transfer . . . will involve a reference to the authorities in charge of the reserved departments. . . . There are few, if any, subjects on which they (the functions of the portions of the Government) do not overlap. Consequently the theory that, in the case of a transferred subject in charge of a minister, it will be possible to dispense with references to departments of Government concerned with the control of reserved subjects is largely without foundation." Ministers with actual experience of administration have endorsed every word of this passage. Such overlapping also, incidentally, caused some difficulties for the Presidents of Legislative Councils : they found it 'extremely difficult'⁸ to distinguish one set of subjects from another and to direct discussion to relevant points.

It may be argued that this is to overstate the argument, for in practice the functions of government can be and often are partitioned, as they are between local bodies and the central government, and on a larger scale in federal governments ; and again, arrangements can be made, as in fact were made, in the rules of business to prevent friction, and if it arises, to settle it. But on closer examination, these arguments do not contain much substance. The division of functions in a unitary state between the Central Government and the local

bodies is of a different kind, as ultimately responsibility is unified. The analogy of the federal division of powers is more to the point, as there the responsibility of the executive in the federal and state governments appears to be to different authorities. But the analogy is not on all fours. In a federal state with parliamentary executives, the executives are no doubt immediately responsible to two different legislatures, but ultimately, to the same people as a whole or as organized in part states. Dyarchy in India divided government into two parts, one accountable to a dominant alien legislature, and the other to a subordinate local legislature. The seeds of suspicion were there from the beginning. Again, the whole complex of ideas and institutions which we call federalism is based on 'pure dualism', with its separate legislatures, separate purses and an independent Court to decide disputes, which finds no parallel in dyarchy. If it be argued that in the capacity of arbiter of disputes between the Reserved Half and the Transferred Half, the Governor is really performing a judicial function, the answer is that the political and administrative position of a Governor makes it impossible for him to take a judicial view of the questions that come up or to gain credit for doing so.

Arrangements no doubt can be made, as indeed were made, in the provinces, to prevent friction.

The substance of these arrangements is to leave to joint deliberation the point at issue, and to trust to mutual goodwill for preventing friction, and finally to leave it to the Governor to decide. But experience shows that these are hardly conducive either to the dispatch of business and efficiency of administration, or to the clear definition of responsibility. Joint deliberation has, as we have shown, practical limitations. The line between joint discussion and separate decision tends to be blurred. The strength of numbers counts ; it leads insensibly to a give and take, not necessarily based on an understanding of the merits of the case ; irrelevant considerations like the general necessity for mutual support play an important part in shaping the final decision, leading to insincere compromises. This is particularly true where financial considerations are involved. It was the experience of ministers that before they could persuade the cabinet to agree to the demands in respect of the Transferred Half, the policy underlying them had to be explained and, in practice, convincingly.

In the result, the inter-relation of reserved and transferred subjects at many points makes the exercise of full responsibility by ministers over their departments extremely difficult.

WEAKNESS, INEFFICIENCY

Dyarchy is divided government and therefore a weak government. Under this system the busi-

ness of government cannot, as it should, be inspired by a common purpose. Ministers appointed from the legislature are normally bound to feel a real obligation to that body ; that is the very object of dyarchy. But every link that binds them to the legislature works only to separate them from their official colleagues who are responsible to a different authority, with the result that the dualism inherent in dyarchy tends to come to the surface. "Once this dualism has established itself between the two halves of government—and the many instances in which ministers and Executive Councillors have opposed each other by speech and vote in open Council prove its possibility—government must become impossible."⁹ This dualism may be masked by a coalition as was indeed done in some provinces ; but the coalition must be an artificial one, as the parties thereto have their mainsprings of power in two different sources, and, if carried too far, is likely to defeat the object of dyarchy.

Again there are so many checks and balances which in effect impede speedy action and chill enthusiasm. In particular, the Reserved Half of Government, in so far as they have in practice to carry the legislature with them, would tend, as we saw, to take the line of least resistance, and prefer to postpone what they consider beneficial action rather than face hostility on the part of the legislature. If they venture to frame

proposals, and if the legislature is not disposed to agree with their view, they may prefer dropping the matter to using their special power. Besides, they may have to carry the ministers with them in order to gain the support of their followers in the Council, the strength of this factor depending on the following the ministers can command in the legislature. But the need for such support raises fresh difficulties. Attempt is made to obtain by compromise a formula¹⁰ which would represent the views of both parts of the Government ; in reality it hardly represents the real views of either. The result is weak government. Ministers are bound to concentrate on the responsibility which they owe to their legislature and disregard the embarrassment which their policy might cause to the reserved side for the successful working of which they have no responsibility ; and Executive Councillors, responsible to a different authority, are apt to overlook the embarrassment which their policy might cause to the transferred side for the successful working of which they have no responsibility.

The Transferred Half can normally expect better sympathy for their proposals from the legislature ; but on account of the interdependence of functions, the want of organized parties and of a separate purse, it is compelled to seek the support of the Reserved Half, and, in so doing, to com-

promise. Too much of compromise is inimical to strong and efficient government.

One minor cause of weakness, which is incidental, but not peculiar, to dyarchy may be mentioned here. Ministers are new to their task, and the traditions of administrative experience and of parliamentary government are lacking. Therefore, as Lord Irwin put it, "in some places and in some directions there has been a certain loss of efficiency." The same might happen, however, wherever there is transfer to popular management of an efficiently run bureaucratic institution in any part of the world. The difficulty inherent in such a transfer was accentuated in some provinces by the fact that competent ministers were not available." An Indian witness stated¹² before the Statutory Commission that sometimes there were ministers who could not put two sentences together in correct English, or sometimes they could not follow the questions that were asked in the Council in quick succession, and whenever they could not answer, they got rid of the difficulty by saying. "I want notice." When the ministers were personally able, they had other difficulties to contend with: they had no following on account of the defective party organization, and were not able to plan and carry out a consistent and useful policy. Maximum efficiency cannot be achieved under these conditions. And a final cause of inefficiency.

We have seen that while in general the Services co-operated with their political chiefs, there were instances of friction especially when ministers had an individuality of their own ; it is obvious that where disharmony exists, efficiency must be affected.

TRANSITIONAL NATURE

It was anticipated, at the time when the Reforms were discussed, that the transfer to popular control of some functions of government would itself be a direct inducement to further demands, and that these demands might lead to a premature transfer of other branches of the administration merely to allay discontent. This anticipation has proved true. Experience justifies the view, that nothing is more unsettling in any country than to dwell for a long time in suspense about its future form of government. The prescription of a time limit by the constitution, say ten years, only adds to the difficulties. The assumption behind such prescription is that it would prevent any earlier demand for greater responsibility, and that everybody would settle down to work the constitution to allow a good account to be rendered before the Commission at the end of the period. It is a good commentary on this that, within a year¹³ of the introduction of the Reforms, demands were made for a revision of the constitution. From

that time forward no year passed without similar motions being introduced in one or other of the legislative bodies, or similar proposals being ventilated on other matters. These resolutions and discussions indicate the kind of reaction on the minds of politicians caused by the knowledge that the existing constitution is a transitional one; demands for further instalments are made because they are popular. Briefly, attention is fixed more on hastening the end of dyarchy than on exploring its full potentialities. Destructive tactics are developed. Forms of procedure are diverted from their original purpose to suit the new purpose. Thus in the English constitution of today, the refusal of supply is a constitutional reserve power which may be used to enforce the responsibility of ministers to Parliament, but so far it has not been used. But, within a few years of the starting of dyarchy, in more than one province 'supply' was refused. The reduction of ministerial salaries, meant to raise debates on specific subjects, was used to end ministries. The effects of a negative programme in delaying the growth of political parties have been referred to elsewhere; parties require for their development differences in constructive programmes. The conclusion seems inevitable that it is useless to maintain the position that at stated intervals an examination will be made, progress will be

appraised and a judgement formed as to fitness for further advance. Successful constitutions grow ; they are not constructed at stages.

MAXIMISES FRICTION

There are practical difficulties in every form of government. No skill can altogether eliminate friction. "The artificer's task is so to contrive that the heat generated will not be sufficient to melt the bearings and bring the machine to a standstill." ¹⁴ No motor, it has rightly been said, will ever be invented which will leave airmen free of anxiety. Various branches of the administration overlap and are interconnected at innumerable points and each one of these points is a point of possible and probable friction. But it may be laid down as a general proposition that a government, operating within the same territorial unit, which provides the largest number of safeguards, also maximises the opportunities for friction. Dyarchy is a good instance. Here, by the very nature of the constitution, many safeguards are necessary ; for it is an attempt to combine two irreconcilables, the control by two different authorities, the one popular and elective in origin, the other official and non-elective. Ministers must be given power, but the rights of the Services and of vested interests must be safeguarded ; ministers and the Services resent. To avoid friction between the two parts of the

government, and to see that the administration of the one does not adversely affect the other, they must be brought together in joint counsel ; but that leads to friction between the ministers and the legislative council. For, that council and the public attribute the absence of friction within the government to the subservience of ministers ; ministers are charged with forsaking their principles as soon as they take office. The legislative council is given power to influence the Reserved Half, but not to control it ; both murmur. The legislature and ministers are given power in transferred subjects, but to prevent abuse of power, the Governor, the Governor-General and the Secretary of State are given certain over-riding powers ; ministers and the legislature grumble. Power must be equal to responsibility.

DIFFICULT TO WORK

Incomplete self-government is the most difficult form of government ; it is always, so to speak, reaching out to fulfil itself. A Madras minister said¹⁵ that angels could not work dyarchy ; a member of Council supplemented the remark by saying that devils also could not work it.¹⁶ These statements were perhaps made in a time of disillusionment ; but they no doubt contain an element of truth. While dyarchy is a theoretically workable system for a theoretically perfect legislative council

and for a government in which every member has the will to work it, it opens many loopholes for irresponsibility and obstruction, of which great advantage was taken in many cases. It depends too much upon the uncertainties of the personal element. It expects too much from the Governor, ministers, Executive Councillors and members of the legislative council by way of patience, and reasonableness which may not always be found. A scheme of government, which presupposes for its continued existence and harmony the perpetual exercise of these qualities, is not likely to have a long life ; sooner or later, serious friction is bound to develop and make it unworkable. If dyarchy succeeds it can only be in spite of it, and by forsaking its fundamental principles of divided control and divided responsibility.

III

TRAINING IN RESPONSIBILITY

But the greatest defect of all we have reserved to the last, *viz.*, it defeats its own purpose. The point was well put¹⁷ by Lord Goschen, a former Governor of Madras, when he said that a system which was intended to teach responsibility has taught irresponsibility. The indictment, coming from such a competent authority, is a grave one ; it is worth while to examine whether it is correct,

and if it is, what has led to this strange perversion from its original purpose.

Responsible government primarily implies that the executive is formed from the legislature and is responsible to the legislature in the sense that it can only remain in office so long as it can command its support, and that at intervals the decision as to governmental policy, or as between rival parties, is referred to the electorate by means of a dissolution. This, however, does not necessarily imply the subordination of the Executive to the legislature. In England, for instance, the Cabinet may, by its prerogative of dissolution, appeal from the legislature to the electorate, from the legal sovereign to the political sovereign. Normally, however, the House of Commons is supposed to be representative of the people, and, therefore, the Executive considers it its duty to justify its acts before the House ; but it is always conscious of its ultimate dependence on the electorate. On the other hand, in countries like France, where, by convention, the right of dissolution has fallen into disuse, the parliamentary responsibility is more clearly emphasized, leading to the subordination of the Executive to the legislature.

The whole object of dyarchy was that electors and their representatives in the legislature should learn to form right judgements of the acts for which ministers were answerable to them, and that

ministers should feel that they were called upon to justify their own acts before the legislature and the electorate—and so learn the lesson of taking responsibility. But dyarchy failed to achieve its object, except to a limited extent.

MINISTERIAL RESPONSIBILITY

The evidence to prove this is that ministers generally did not consider the confidence of an elected majority in the legislature necessary for their continuance in office. A glance at the figures in the division lists in provincial councils clearly brings out this fact. Here is an illustration.¹⁸

Year.	Total No. of divisions.	Total No. of divisions in which Govt. were neutral.	No. of Govt. defeats.	No. of Govt. successes.	If official bloc omitted, No. of addl. Govt. defeats.	If official bloc omitted, total No. of Govt. defeats.	No. of ties.
1921	3		2	1		2	
1922	17		4	13	4	8	
1923	4	1	1	2	1	2	
1924	19		10	9	4	14	1
1925	30	1		29	11	11	
1926	3			3	1	1	1
1927	26	3	3	23	7	10	
1928	2		1	1		1	

In spite of the defeat of ministers year after year they continued in office. In the United Provinces,¹⁹ during three out of the seven years from 1920-1927, the ministers could not have continued in office without the support of the official block. The same story is generally true of the state of things in Madras, Bihar and Orissa and Bengal.²⁰

It may of course be argued that defeats of government in legislature do not, and need not, always indicate want of confidence of the legislature in the ministry ; the legislature, if it was serious, could have compelled ministers to resign by refusing 'supply'. This argument takes for granted that so long as the legislature does not resort to the step of refusing supply, the ministers must be presumed to have its confidence. This argument cannot be accepted as valid under the conditions found in this country. The refusal of supply is always an extreme step, and a legislature will not resort to it except under grave provocation. The argument can only be applied to councils where there is a stable party organization, and not to councils so disorganized as the legislative councils in India. Where and when they were well organized, they also took that extreme step. There was the further fact that in those instances where an elected majority in councils did resort²¹ to the extreme step of indicating its want of confidence in the ministers, the ministers were supported by the

official block, and, on account of such support, were able to continue in office in spite of the hostility of the elected majority. The knowledge that an elected majority had in fact no power to send away ministers from power must have acted as a powerful inhibition to continual resort to the extreme step of refusal of supply.

The result was that the general idea prevailed that ministers could continue in office, even though they did not command the support of the elected majority in the legislature—a clear indication of the inadequate development of political responsibility. The reasons that account for this state of affairs have been hinted at in the course of previous discussions in this Essay ; it may be useful to bring them together in this context : the absence of stable parties, the existence of the official and the nominated block ; the attempts at working dyarchy in the unitary way—the ‘happy family’ idea ; the joint purse ; the over-riding powers vested in the Governor ; the rights of the services ; the right of Secretaries of direct access to the Governor and the interdependence of functions of government, all combined to obscure and to delay the growth of responsibility. Ministers did not feel that they could carry out the policy acceptable to the legislature in its entirety, nor that they should do so for their continuance in Office. Well might the Madras minister say to the

Legislative Council²² that his real responsibility was to the Governor. Though clearly a perversion of the purpose of dyarchy, it was in accordance with the facts of the situation. "We are tired of positions of splendid irresponsibility", said²³ a member in the Bengal Legislative Council, "We do not want these golden chains to tie us to the wheels of an irresponsible government."

There are no doubt examples where ministers resigned in deference to the elected majority; but these resignations were invariably followed by the suspension of the constitution. A system where ministers were defeated time and again, and yet continued in office, or where the acceptance of ministerial responsibility was followed by a suspension of the constitution, cannot be said to have attained its object.

THE LEGISLATURE

Dyarchy cannot also be said to have succeeded in creating a sense of responsibility in the legislature. There was in fact a blurring of responsibility. The authors of the Reforms had clearly intended that the special responsibility of either part of the Government for the subjects allotted to it would be recognized by the legislative council and the electorate. This recognition is important for the successful working of dyarchy. Theorists had even considered²⁴ the suggestion that two legislatures

might be set up to deal with each half of government, so that there might be no blurring of responsibility, though the suggestion had at once to be rejected; there was the obvious difficulty that double sets of constituencies and elections would be burdensome in every way and hopelessly confusing to people who were merely at the threshold of practical politics. As it was, the legislature sat under a dual capacity: it had control over the transferred departments, but only influence on the reserved side.

From evidence available to us it would be wrong to say that the legislature was not aware of the difference in its relation to the ministers and Executive Councillors respectively. The Council often spoke²⁵ of 'our ministers' and their responsibility 'to us'; it was distinctly more sympathetic towards the transferred departments—provincial governments even speak of 'the general immunity from attacks in Council' enjoyed by these departments; it was prepared to consider sympathetically the demands for grants for them; it was prepared to agree to new taxation if the proceeds thereof were devoted to them; the bills introduced by ministers were less frequently rejected²⁶; the council realized²⁷ that the power of the purse in respect of transferred subjects was almost entirely in their hands; it declined²⁸ to take responsibility in respect of matters relating to the Reserved Half.

But that ministers, Executive Councillors, Governors and Presidents of Legislative Councils had occasionally to remind²⁹ them of the distinction shows that they were sometimes apt to forget it. The fact that ministers were attacked in no-confidence motions for their policy with reference to reserved subjects, the comparatively greater attention they devoted to reserved subjects and the attempts they made to control these departments by refusing them grants are evidences on the other side—they show that the Councils failed to realise adequately the change made by the Reforms. We have more than once referred to the decision of the elected members of Councils to exclude ministers from an association which they were forming ; this is symptomatic of the general tendency to identify ministers with the old bureaucratic governments. This undoubtedly prevented the Council from making the best use of the opportunities afforded in respect of transferred subjects. The dependence of ministers on the official and nominated block for maintaining them in office, as the Reserved Half did ; the unwillingness of ministers to resign when they had ceased to command the confidence of an elected majority in the Council ; the way in which ministers sometimes answered questions in Council or avoided answering them in the same way as Executive Councillors did ; the unwillingness of ministers to oppose the Reserved Half, by speech and vote in

open Council, on matters in which the Council took a strong view—all these contributed to make the Council think of ministers in the same relationship as they thought of Executive Councillors. Indeed some Councillors indentified them so completely that they asked³⁰ a minister to let the Council know what the difference was between the responsibility of the Executive Councillors and that of ministers except in so far as they had to sanction the pay of the ministers; elsewhere, they wanted³¹ to 'treat both the departments, reserved and transferred as being responsible to the Council.'

ELECTORATE

That the voter found it difficult to grasp the distinction between transferred and reserved subjects has been referred to elsewhere in this Essay. "What is the difference between transferred and reserved subjects?" was the query³² addressed to members of Council when they addressed villagers' meetings. This point has some significance in arriving at a proper estimate of dyarchy. We have seen that under a system of responsible government, the ministers look beyond the legislature to the electorate. But when vital subjects like law and order, finance, land revenue and irrigation are under the control of the Reserved Half, as in dyarchy, there is little opportunity or inducement for the elector to learn the meaning of responsi-

lity, or exercise his power in a responsible manner. For the voter knows that whatever action he takes, the Government will continue to function. He feels that he can skate on thin ice and that if he falls, he runs no risk, as he will be saved and restored to vigour.³³ He will therefore never learn to be careful, for the consequences of his action impose no penalty upon him. He can afford to be irresponsible. This was the experience, at any rate, of the mass of Indian electors. The villager considered the Government one and indivisible. He lost his interest in Councils and representatives if he was told that only in some matters could his representatives be helpful, while in others they could do nothing.) "Why have you come to me?" came the question. Such irresponsibility will in a system of responsible government ultimately recoil on the voter's head; internal or external confusion will result from it. There is in fact an automatic check, real if imperfect, on the exercise of political power, and the voter is soon made to realize that his welfare depends upon the character of the man whom he elects to represent him. The security which the voter enjoys under dyarchy, irrespective of whether he takes interest in public affairs or not, and the powerlessness of his representative to do anything in matters which vitally touch him, breed irresponsibility in him. The habit of irresponsibi-

lity breeds on itself, and, even when full responsibility is introduced, it may be difficult to shake him off his lethargy. The idea that in his vote he has the means of protecting himself and that, if those who claim to represent him neglect his interest, he can discard them hardly dawns upon him under a system of dyarchy.

IV

ACHIEVEMENTS

Dyarchy, was introduced with high hopes ; and it must be said that, on a theoretical analysis and if worked under ideal conditions, it is not without merits. It is the strictly logical solution of a situation in which it is desired to base the authority of Government in different matters on two different sources—a situation in which a complete transfer of responsibility is considered impossible by a ruling power. It is thus a bridge between autocracy and responsibility. It is educative in the sense that it gives men an opportunity to show what they can do, as it proceeds on the basis of proved results ; it would put everybody on their mettle. “ Nothing is more likely ”, it was said, “ to encourage a higher standard than the proposed system of making the concession of each new department dependent on success in managing those already transferred.” It is elastic, for, through a wise ad-

justment of the transfer of subjects and of the rules applicable to them, it may be adapted to varying conditions.

In practice, largely because, I think, the conditions it postulates are too difficult to obtain, its achievements are much more modest. It is a trite remark that where it succeeded it succeeded only because the principle of dyarchy was largely ignored. But this much may be said : under dyarchy many persons have been brought in touch with problems of administration, and with the difficulties of a responsible form of government. The idea that in the work of administration it is now necessary not only to convince oneself of the merits of a particular scheme, but also, what is more difficult, to convince others, is becoming more and more familiar—the art of commending ministerial policy to private members. This is a valuable asset, especially if the same people have an opportunity of working later under a system of full responsible government. And another good result is that the ideas of ‘ transferred subjects ’ and ‘ popular control ’ have brought about a concentration of public interest on certain beneficial activities of government—the nation-building departments. This was perhaps bound to come sooner or later ; but there is no doubt that dyarchy, by throwing into relief the distinction between bureaucratic and popular control, hastened that desirable result.

CHAPTER XI

THE LESSON OF EXPERIENCE

“There are some amongst us,” said¹ a Madras minister, “who still believe that dyarchy can be worked in favourable conditions, but such conditions do not ordinarily obtain”. This is perhaps as sound a judgement as can be passed on dyarchy as a political system. It at least stresses the fact that ordinarily dyarchy is a most difficult form of government. Wise statesmanship should therefore explore all possible alternatives before dyarchy is recommended for adoption. But it is possible to imagine circumstances where dyarchy is considered an inevitable transitional stage. A government unwilling and unable to transfer complete power ; the insistent demands of a subject people—these may lead to the adoption of dyarchy. Thus though dyarchy has been abolished in the provinces, it reappears in a modified form in the Central Government under the new constitution of India, and in Burma. It is not unlikely that, years later, the idea of dyarchy may appeal as a fit experiment to be tried in the Indian States. These States are now, broadly speaking, under a system of personal rule. The movement for self-government, if history is any guide, is likely to grow among the state people, if not immediately, in a not very

distant future. The example of British Indian provinces, to which the states will be federally united, is likely to prove an inspiration. But the rulers may be as unwilling, as the rulers of British India earlier, to surrender power. Dyarchy may be adopted.

Can the experience of the past, then, be of any value for guidance in the future? A comparatively homogeneous people, and the small size of the province or state and a people endowed with considerable patience and reasonableness—these are favouring conditions. These can hardly be laid down in a constitution. In the working principles which should find a place in a constitutional document, the writer doubts whether the experience gained from the working of dyarchy in the Provinces will be of any great use in the framing of any new scheme. The conditions under which any new experiment in government is started are so different that it is difficult to apply to it, with confidence, the principles learnt from the working of another. The scheme of dyarchy embodied in the Government of India Act, 1935, will supply an illustration. The subjects reserved under the scheme, *viz.*, External relations, Defence, and Ecclesiastical department, are subjects which normally at any rate have fewer points of contact with the other functions which are transferred, than those reserved under the

scheme embodied in the Act of 1919 and the Devolution Rules ; and again, the part of the budget for reserved departments is not votable. There are then the special responsibilities and discretionary powers of the Governor-General in relation to transferred subjects, which have no parallel to the powers of the Governor in respect of transferred subjects under the older scheme.

But experience of the past, if of little use by way of positive guidance, may yet supply a warning or two. Experience justifies and reinforces the view taken by Lionel Curtis as early as 1919 : Avoid masking dualism. Attempts to make dyarchy appear as unitary government are to be deprecated. It was not a wise suggestion that the joint authors made,² that the executive 'should present a united front to the outside' ; for, it was clearly the purpose of dyarchy that the legislature and the electorate should hold ministers responsible for some functions of government but not for others ; and that ministers themselves should learn to justify their acts before the same legislature and electorate ; Executive Councillors had greater freedom in this regard. From this point of view a joint purse, the emphasis on joint deliberation in *all* matters instead of restricting it to those which clearly touch both Reserved and Transferred subjects ; the use of the official vote to support both the Reserved and Transferred side are, clearly, mistakes. It is

not denied that they have advantages from some view points ; but from the point of view of dyarchy, the deciding consideration should be what arrangements will best lead to a clear definition of responsibility. In the art of administration, the essential question to ask is to whom can the responsibility for an act of government be traced ? This is particularly true of dyarchy, for here responsibility is divided ; and all arrangements which would help the legislature and the electorate clearly to allocate responsibility for the reserved subjects to the Councillors and for the transferred subjects to ministers are to be commended. As finance is so closely connected with administration, a separate purse is clearly necessary ; ministers must depend for their continuance in office on the elected majority, and not on artificial props ; joint deliberation must be restricted to its proper sphere and must not be allowed to lead to joint decisions. In the light of experience, it is also a point for further exploration whether it will not be possible to divide subjects in such a way that the earning capacity and spending needs of the two halves of government, one of which should leave room for normal growth and the other for expanding departments, will be approximately equal. It may be also suggested, for the avoidance of the blurring of responsibility, that bills and demands for grants relating to the Reserved Half should not be

submitted to the *vote* of the legislative council, though they may be submitted for discussion. There is also some point in an old suggestion made in 1919 that the legislature should sit under a different name, and, if possible, in a different building when dealing with the two different branches. Forms count as well as the spirit.

The second principle is that the transference of power, when made, must be real and substantial. Even if there are fewer subjects which are available for transfer, those must be transferred with a minimum of outside interference and control. Though limited in extent, the experiment will be more real. In other words, power must be equal to responsibility. Only then can a measure of responsibility grow, and there can be a basis on which a judgement could be based as to the possibilities of further transfer. The general and undefined power granted to the Governor, under the Act of 1919, to over-ride his ministers was clearly against this principle ; it should have been more specifically defined. The fewer the number of the services recruited by an outside authority and subject to extraneous control, the better for the success of the experiment. In fact the Lee Commission should have been appointed in 1919, not in 1923. Recruitment and control of the services in transferred departments by ministers are essential, subject to safeguards in respect of officers recruited prior to the introduc-

tion of the experiment. To guard against nepotism, corruption and abuse of patronage by inexperienced ministers, it would be good if, on the introduction of the constitution, an impartial public services commission were appointed.

But it must be made clear that the power transferred to ministers is to be exercised on the principle of corporate responsibility, and not on that of individual responsibility, that is, so far as the rules of a constitution can provide. Corporate responsibility itself is a safeguard against abuse of power. We have seen that there were ambiguities in the language of certain constitutional documents relating to this point ; these could be avoided. This does not ensure that joint responsibility will grow, but what the constitution-makers can do is to avoid possible hindrances.

APPENDICES

APPENDIX A.

Statutory provisions relating to Dyarchy in the Government of India Act, 1919.

Section 19-A. The Secretary of State in Council may, notwithstanding anything in this Act, by rule regulate and restrict the exercise of the powers of superintendence, direction and control, vested in the Secretary of State and the Secretary of State in Council by this Act, or otherwise, in such manner as may appear necessary or expedient in order to give effect to the purposes of the Government of India Act, 1919.

Before any rules are made under this section relating to subjects other than transferred subjects, the rules proposed to be made shall be laid in draft before both Houses of Parliament, and such rules shall not be made unless both Houses by resolution approve the draft either without modification or addition, or with modifications or additions to which both Houses agree, but upon such approval being given, the Secretary of State in Council may make such rules in the form in which they have been approved, and such rules on being so made shall be of full force and effect.

Any rules relating to transferred subjects made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and if an address is presented to His Majesty by either House of Parliament within the next thirty days on which that House has sat after the rules are laid before it praying that the rules or any of them may be annulled, His Majesty in Council may annul the rules or any of them, and those rules shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

45 (1) Subject to the provisions of this Act and rules made thereunder, every local government shall obey the orders of the Governor-General in Council, and keep him constantly and diligently informed of its proceedings and of all matters which ought, in its opinion, to be reported to him, or as to which he requires information, and is under his superintendence, direction and control in all matters relating to the government of its province.

45-A (1) Provision may be made by rules under this Act—

(d) for the transfer from among the provincial subjects of subjects (in this Act referred to as "transferred subjects") to the administration of the Governor acting with ministers appointed under this Act, and for the allocation of revenues or moneys for the purposes of such administration.

(2) Without prejudice to the generality of the foregoing powers, rules made for the above-mentioned purposes may—

(i) regulate the extent and conditions of such.....allocation, and transfer ;

(iii) provide for constituting a finance department in any province and regulating the functions of that department ;

(iv) provide for regulating the exercise of the authority vested in the local government of a province over members of the public services therein ;

(v) provide for the settlement of doubts arising as to whether any matter does or does not relate to a.....transferred subject, and for the treatment of matters which affect both a transferred subject and a subject which is not transferred ; and

(vi) make such consequential and supplemental provisions as appear necessary or expedient ;

(3) The powers of superintendence, direction, and control over local governments vested in the Governor-General in Council under this Act, shall, in relation to transferred subjects, be exercised only for such purposes as may be specified in rules made under this Act, but the Governor-General in Council shall be the sole judge as to whether the purpose of the exercise of such powers in any particular case comes within the purposes so specified.

(4)

Provincial subjects, other than transferred subjects, are in this Act referred to as "reserved subjects."

46 (1) The presidencies of Fort William in Bengal, Fort St. George, and Bombay, and the provinces known as the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, and Assam, shall each be governed, in relation to reserved subjects, by a Governor in Council and in relation to transferred subjects (save as otherwise provided by this Act) by the Governor acting with ministers appointed under this Act.

The said presidencies and provinces are in this Act referred to as "Governors' provinces" and the two first named presidencies are in this Act referred to as the presidencies of Bengal and Madras.

47 (1) The members of a Governor's Executive Council shall be appointed by His Majesty by warrant under the Royal Sign Manual, and shall be of such number, not exceeding four, as the Secretary of State in Council directs.

49 (1) All orders and other proceedings of the government of a Governor's province shall be expressed to be made by the government of the province, and shall be authenticated as the Governor may by rule direct, so, however, that provision shall be made by rule for distinguishing orders and other proceedings relating to transferred subjects from other orders and proceedings.

(2) The Governor may make rules and orders for the more convenient transaction of business in his executive council and with his ministers, and every order made or act done in accordance with those rules and orders shall be treated as being the order or the act of the government of the province.

The Governor may also make rules and orders for regulating the relations between his executive council and his ministers for the purpose of the transaction of the business of the local government:

Provided that any rules or orders made for the purposes specified in this section which are repugnant to the provisions of any other rules made under this Act shall, to the extent of that repugnancy, but not otherwise, be void.

50 (1) If any difference of opinion arises on any question brought before a meeting of a Governor's executive council, the Governor in Council shall be bound by the opinion and decision

of the majority of those present, and if they are equally divided, the Governor or other person presiding shall have a second or casting vote.

(2) Provided that, whenever any measure is proposed before a Governor in Council whereby the safety, tranquillity or interests of his province, or of any part thereof, are or may be, in the judgement of the Governor, essentially affected, and he is of opinion either that the measure proposed ought to be suspended or rejected, and the majority present at a meeting of the Council dissent from that opinion, the Governor may, on his own authority and responsibility, by order in writing, adopt, suspend or reject the measure, in whole or in part.

(3) In every such case the Governor and the members of the council present at the meeting shall mutually exchange written communications (to be recorded at large in their secret proceedings) stating the grounds of their respective opinions, and the order of the Governor shall be signed by the Governor and by those members.

52 (1) The Governor of a Governor's province may, by notification, appoint ministers, not being members of his executive council or other officials, to administer transferred subjects, and any ministers so appointed shall hold office during his pleasure.

There may be paid to any minister so appointed in any province the same salary as is payable to a member of the executive council in that province, unless a smaller salary is provided by vote of the legislative council of the province.

(2) No minister shall hold office for a longer period than six months, unless he is or becomes an elected member of the local legislature.

(3) In relation to transferred subjects, the Governor shall be guided by the advice of his ministers; unless he sees sufficient cause to dissent from their opinion, in which case he may require action to be taken otherwise than in accordance with that advice;

Provided that rules may be made under this Act for the temporary administration of a transferred subject where, in cases of emergency, owing to a vacancy, there is no minister in charge of the subject, by such authority and in such manner as may be prescribed by the rules.

72-D (2) The estimated annual expenditure and revenue of the province shall be laid in the form of a statement before the council in each year, and the proposals of the local government for the appropriation of provincial revenues and other moneys in any year shall be submitted to the vote of the council in the form of demands for grants. The council may assent, or refuse its assent, to a demand, or may reduce the amount, therein referred to either by a reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed :

Provided that—

(a) the local government shall have power, in relation to any such demand, to act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount therein referred to, if the demand relates to a reserved subject, and the Governor certifies that the expenditure provided for by the demand is essential to the discharge of his responsibility for the subject ; and

(b) the Governor shall have power in cases of emergency to authorize such expenditure as may be in his opinion necessary for the safety or tranquillity of the province, or for the carrying on of any department ;

.....

(5) Where any Bill has been introduced or is proposed to be introduced, or any amendment to a Bill is moved or proposed to be moved, the Governor may certify that the Bill or any clause of it or the amendment affects the safety or tranquillity of his province or any part of it or of another province, and may direct that no proceedings or no further proceedings shall be taken by the council in relation to the Bill, clause or amendment, and effect shall be given to any such direction.

72-E (1) Where a Governor's legislative council has refused leave to introduce, or has failed to pass in a form recommended by the Governor, any Bill relating to a reserved subject, the Governor may certify that the passage of the Bill is essential for the discharge of his responsibility for the subject, and thereupon the Bill shall, notwithstanding that the Council have not consented thereto, be deemed to have passed, and shall on signature by the

Governor become an Act of the local legislature in the form of the Bill as originally introduced or proposed to be introduced in the council or (as the case may be) in the form recommended to the council by the Governor.

(2) Every such Act shall be expressed to be made by the Governor and the Governor shall forthwith send an authentic copy thereof to the Governor-General, who shall reserve the Act for the signification of His Majesty's pleasure, and upon the signification of such assent by His Majesty in council, and the notification thereof by the Governor-General, the Act shall have the same force and effect as an Act passed by the local legislature and duly assented to :

Provided that, where in the opinion of the Governor-General a state of emergency exists which justifies such action, he may, instead of reserving such Act, signify his assent thereto, and thereupon the Act shall have such force and effect as aforesaid, subject however to disallowance by His Majesty in council.

(3) An Act made under this section shall, as soon as practicable after being made, be laid before each House of Parliament, and an Act which is required to be presented for His Majesty's assent shall not be so presented until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat.

84-A (1) Within ten years after the passing of the Government of India Act, 1919, the Secretary of State with the concurrence of both Houses of Parliament shall submit for the approval of His Majesty the names of persons to act as a commission for the purposes of this section.

(2) The persons whose names are so submitted, if approved by His Majesty, shall be a commission for the purpose of inquiring into the working of the system of government, the growth of education, and the development of representative institutions, in British India, and matters connected therewith, and the commission shall report as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify, or restrict the degree of responsible government then existing therein, including the question whether the establishment of second chambers of the local legislatures is or is not desirable.

APPENDIX B.

LIST OF TRANSFERRED SUBJECTS

(Devolution Rules—Schedule II)¹

Subjects	The Transfer applies to
1. Local self-government, that is to say matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining boards of health and other local authorities established in the province for purposes of local self-government, exclusive of matters arising under the Cantonments Act, 1910 ² ; subject to legislation by the Indian legislature as regards (a) the powers of such authorities to borrow otherwise than from a provincial government, and (b) the levying by such authorities of taxation not included in Schedule II to the Scheduled Taxes Rules.	All Governors' Provinces
2. Medical administration, including hospitals, dispensaries and asylums, and provision for medical education.	Do.
3. Public health and sanitation and vital statistics ; subject to legislation by the Indian legislature in respect to infectious and contagious disease to such	
<hr/> <p>1. See Devolution rule 6. 2. This Act has been repealed and re-enacted in the Cantonments Act, 1924, (II of 1924).</p>	

Subjects	The Transfer applies to
extent as may be declared by any Act of the Indian legislature.	Do.
4. Pilgrimages within British India.	Do.
5 (1) Education, other than European and Anglo-Indian education, provided that—	
(a) the following subjects shall be excluded, namely :—	
(i) the Benares Hindu University, the Aligarh Muslim University and such other Universities, constituted after the commencement of these rules, as may be declared by the Governor-General in council to be central subjects, and .	
(ii) Chiefs' Colleges and any institution maintained by the Governor-General in council for the benefit of members of His Majesty's Forces or of other public servants of the children of such members or servants; and	
(b) the following subjects shall be subject to legislation by the Indian legislature, namely :—	
The definition of the jurisdiction of any University outside the province in which it is situated	
(2) Subject to the provisos set out in clause (1) in so far as	

Subjects	The Transfer applies to
they are applicable, European and Anglo-Indian Education.	Burma.
6. Public Works, other than those falling under entry II of this part, and included under the following heads, namely :—	
(a) construction and maintenance of provincial buildings, other than residences of Governors of provinces, used or intended for any purposes in connection with the administration of the province on behalf of the departments of Government concerned, save in so far as the Governor may assign such work to the departments using or requiring such buildings ; and care of historical monuments, with the exception of ancient Monuments as defined in section 2(1) of the Ancient Monuments Preservation Act, 1904, which are for the time being declared to be protected monuments under section 3(1) of that Act provided that the Governor-General in Council may, by notification in the <i>Gazette of India</i> , remove any such monument from the operation of this exception ; (either absolutely or subject to such conditions as he may, after consultation with the local government or local governments concerned, prescribe) ;	All Governors' Provinces. except Assam.

Subjects	The Transfer applies to
<p>(b) roads, bridges, ferries, funnels, ropeways, causeways and other means of communication, subject to the provisions of rule 12-A. of these rules, and any orders made thereunder ;</p> <p>(c) tramways within municipal areas ; and</p> <p>(d) light and feeder railways and extra municipal tramways, in so far as provision for their construction and management is made by provincial legislation, subject to legislation by the Indian legislature in the case of any such railway or tramway which is in physical connection with a main line or is built on the same gauge as an adjacent main line.</p>	<p>All Governors' Provinces.</p>
<p>7. Agriculture including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and pests and prevention of plant diseases ; subject to legislation by the Indian legislature in respect to destructive insects and pests and plants diseases to such extent as may be declared by any Act of the Indian legislature.</p> <p>8. Civil Veterinary department including provision for veterinary training, improvement of stock and prevention of animal diseases ; subject to legis-</p>	

Subjects	The Transfer applies to
lation by the Indian legislature in respect to animal diseases to such an extent as may be declared by any Act of the Indian legislature.	All Governors' Provinces.
9. Fisheries	All Governors' Provinces
10. Co-operative Societies	All Governors' Provinces
11. Forests, including preservation of game therein (and all buildings and works executed by the Forest Department); subject to legislation by the Indian legislature as regards disforestation of reserved forests.	Bombay and Burma
11-A. Notification under sub-section (1) of section 4 and declaration under sub-section (1) of section 6 of the Land Acquisition Act, 1894, when the public purposes referred to in the said sub-sections appertain to a transferred subject; subject to legislation by the Indian legislature.	All Governors' Provinces
12. Excise, that is to say, the control of production, manufacture, possession, transport, purchase and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and licence fees on or in relation to such articles, but excluding in the case of opium, control of cultivation, manufacture and sale for export.	All Governors' Provinces
13. Registration of deeds and documents; subject to legislation by the Indian legislature.	All Governors' Provinces

Subjects	The Transfer applies to
14. Registration of births, deaths, and marriages; subject to legislation by the Indian legislature for such classes as the Indian legislature may determine.	Do.
15. Religious and charitable endowments.	Do.
16. Development of Industries, including industrial research and technical education.	Do.
17. Stores and stationery required for transferred departments, subject in the case of imported stores and stationery to such rules as may be prescribed by the Secretary of State in Council.	Do.
18. Adulteration of foodstuffs and other articles; subject to legislation by the Indian legislature as regards import and export trade.	Do.
19. Weights and measures; subject to legislation by the Indian legislature as regards standards.	Do.
20. Libraries (other than the Imperial Library), Museums (except the Indian Museum, the Imperial War Museum, and the Victoria Memorial, Calcutta) and Zoological Gardens.	Do.
21. The following miscellaneous matters, namely:—	
(a) regulation of betting and gambling;	Burma.
(b) prevention of cruelty to animals;	

Subjects	The Transfer applies to
(c) protection of wild birds and animals;	
(d) control of dramatic performances and cinematograph; subject to legislation by the Indian legislature in regard to sanction of films for exhibition.	
22. Pounds and prevention of cattle trespass.	Do.

NOTES AND REFERENCES *

CHAPTER I

1. Prof. Oman in 122 *H. C. Deb.* 5 s. 489-90.
2. 1885 *Academy* 10 Oct. 231-2; 1886 *Eng. Hist. Rev.*, I, 350; spelt 'dyarchy.'
3. The Rev. Connop Thirlwall, *Greece* (London, 1835), I, 318; spelt 'diarchy.'
4. Curtis, *Papers*, xxxii; cf. Montagu, *An Indian Diary*, 377; "I think he [Duke] invented 'dyarchy.'"
5. Dated April 6, 1917—*ibid.*, 105.
6. 116 *H. C. Deb.* 5 s. 2338.
7. *ibid.*, 2318.
8. 122 *H. C. Deb.* 5 s. 457; 37 *H. L. Deb.* 5 s. 949.
9. *The New Testament*, St. Luke, 23; St. John, 18 and 19; H. H. Milman, *The History of the Jews* (London, 1892), 257-8.
10. For details, see B. G. Sapre, *The Growth of Indian Constitution and Administration* (Third Edition, Sangli, 1929), 16-25.
11. *ibid.*, 48-9, 138-46.
12. Lovat Fraser, *India under Lord Curzon and After* (London, MCMXII), 415-53; *East India (Army Administration), Correspondence Regarding the Administration of the Army in India* (London, 1905); cited as an example of dualism by Sir M. F. O'Dwyer, *J. S. C.*, 1919, *Minutes of Evidence*, Q. 7803.
13. Curtis, *Papers*, 145.
14. 122 *H. C. Deb.* 5 s. 457.
15. Comment No. 13, reprinted as part of Paper III in Curtis, *Papers*, 178.
16. Curtis, *Papers*, xxxii-iii, 120.
17. The Earl of Cromer, *Modern Egypt* (London, 1908), I, 280-300.
18. W. E. Forbes, *The Philippine Islands* (New York, 1928), I, 184-5, II, 256-8; C. E. Russel, *The Outlook for the Philippines* (New York, 1922), 124-5.

*The full title of the source books cited in these Notes, their date and place of publication are given in the Bibliography pp. 417-23. Figures refer to pages, unless otherwise indicated.

19. It is, however, necessary to add that the word does not appear in the Government of India Act, 1919, or in the rules made under it, or in the Montagu-Chelmsford Report on which the Act was largely based.

20. 122 *H. C. Deb.* 5 s. 448.

21. 38 *H. L. Deb.* 5 s. 118.

22. Curtis, *Papers*, xx.

23. See Sir Claude H. Hill's evidence, *J. S. C.*, 1919, *Minutes of Evidence*, Q. 616.

24. *ibid.*

25. Quoted in *Montagu-Chelmsford Report*, 1918, para. 23.

26. April 1916, reprinted in Curtis, *Papers*, 1-37.

27. See Curtis, *Papers*, xxx ff.

28. April 6, 1917; reprinted *ibid.*, 97-124.

29. A selection reprinted *ibid.*, 126-200.

30. November 1917; reprinted *ibid.*, 326-56.

31. See Curtis, *Letters*, iii.

32. Issued in July 1918.

33. See Montagu, *An Indian Diary*, 1.

34. *ibid.*, 76, 89, 101, 141, 164, 236, 246.

35. *ibid.*, 89.

36. 116 *H. C. Deb.* 5 s. 2357.

37. *Montagu-Chelmsford Report*, 1918, para. 246.

38. This plan was first developed in 'A Joint Address' presented to the Viceroy and the Secretary of State for India in November 1917—A Joint Address, Curtis, *Papers*, 336-46; a month later it was developed more fully in Letters to the People of India, December 1917—reprinted in Curtis, *Papers*, 398-410; it is also referred to by Curtis in his Memorandum to the Joint Select Committee, 13th October, 1919 and printed in *J. S. C.*, 1919, *Minutes of Evidence*, 512-13. A plan similar in essentials but less ambitious in its scope is the one developed by the Madras Government in their letter to the Government of India, dated 17th January, 1918, alluded to in Sir A. Cardew's answers to Sir Henry Craik—*J. S. C.*, 1919, *Minutes of Evidence*, Q. 6047.

39. *J. S. C.*, 1919, *Minutes of Evidence*, 340.

40. 37 *H. L. Deb.* 5 s. 949-52.

41. Adopted by the Thirty-First session of the Indian National Congress held at Lucknow on the 29th December, 1916, outlining

a scheme of Reforms as a definite step towards self-government; also adopted by the All-India Muslim League on the 31st December, 1916.

42. Letters of the Provincial Governments to the Government of India, October to December, 1918, reprinted in Government of India, *First Despatch*, 154, 185-7, 214, 220-2, 238-44, and 314.

43. *ibid.*, 120-5.

44. *ibid.*, 191-3; differs in important respects from the others.

45. 37 *H. L. Deb.* 5 s. 949-52.

46. Government of India, *First Despatch*, 239.

47. In political literature this has been aptly termed a horizontal line of division. See Comment No. 17 on Letter to Mr. Bhupendra Nath Basu—Curtis, *Papers*, 185 and Letter IV in Letters to the People of India, *ibid.*, 373, and Government of India, *First Despatch*, 10.

48. *J. S. C.*, 1919, *Minutes of Evidence*, Q. 169.

49. 37 *H. L. Deb.* 5 s. 949-52.

50. *J. S. C.*, 1919, *Minutes of Evidence*, Q. 7396-9 addressed to Sir Thomas Holderness, G.C.B., K.C.S.I.

51. 122 *H. C. Deb.* 5 s. 456.

52. 37 *H. L. Deb.* 5 s. 1013.

53. Indicated later; see ch. II.

54. Reprinted in Keith (Ed.), *Speeches and Documents*, II, 327-32.

55. In Madras, for instance, three ministers were appointed from 17th December, 1920.

CHAPTER II

1. 37 *H. L. Deb.* 5 s. 1014-15.

2. 26th February, 1919.

3. 16th April, 1919.

4. *Devolution Rules*, Schedule II.

5. *Government of India Act*, sections 45-A. (1), (2) (i) and (vi).

6. A fuller list is given in Appendix B; see for details and exceptions, *Devolution Rules*,—Schedule II. The subjects mentioned in the text are illustrative rather than exhaustive. See also *ibid.* for differences between one province and another.

7. We may also note that some slight changes have been

made in the original division by notification in the *Gazette of India* from February 10, 1921 to September 30, 1926—See *Devolution Rules*, Schedule II, read with footnotes.

8. *Memoranda, Assam*, 226; *J. S. C.*, 1919, *Minutes of Evidence*, 145.

9. *J. S. C.*, 1919, *Minutes of Evidence*, Q. 236L.

10. *ibid.*, 15L.

11. *Selections from Memoranda*, Part II, 12.

12. *Government of India Act*, section 47.

13. *ibid.*, section 52 (1), (2).

14. *ibid.*, section 52 (1).

15. *ibid.*, section 72 (D) (3) iv (a).

16. *ibid.*, section 52 (1).

17. *ibid.*, section 72 (E) (1).

18. *ibid.*, section 72-D (2) (a).

19. *ibid.*, section 72-D (4) ; italics mine.

20. *ibid.*, section 72-D (2) (b) ; italics mine.

21. Para. III

22. *Government of India Act*, section 50 (1).

23. *ibid.*, section 50 (2).

24. *ibid.*, section 52 (3).

25. Para. VI

26. *Government of India Act*, section 19-A.

27. *ibid.*, section 45-A. (3).

28. Rule under section 19-A, *M. L. C. M.*, I 109.

29. Devolution rule 49.

30. Sections 29-A, 30 (A) and Part VII-A.

31. Section 49 (1).

32. *J. S. C.*, 1919, *Report*, para. 5.

33. Circumstances indicated in the Instrument of Instructions, cited *supra*, pp. 45-6.

34. Section 49 (2).

35. *Devolution Rules* 7, 9 (1), 31, 32, 33, 34 and 35.

36. IV.

37. Devolution rule 9 (1).

38. Devolution rule 31.

39. Devolution rule 32 (1).

40. Devolution rule 32 (2).

41. *Instrument of Instructions to the Governor*, para. IV.

42. 116 *H. C. Deb.* 5 s. 2305-07.

43. Section 84-A.
44. *J. S. C.*, 1919, Report, para 7.

CHAPTER III

1. Introduction to Bagehot, *English Constitution* (New Edition), cited in *Joint Committee 1932-33*, II B, 710.
2. *J. S. C.*, 1919, *Minutes of Evidence*, 301.
3. *Memoranda, Madras*, 73 ff.; *Memorandum, Bombay*, part I, 561 ff.; *Report, Bengal*, 81-91; *Report, U.P.*, 7-8, 87-90.
4. The Layton Report, *Indian Statutory Commission*, II, 225, 229.
5. See *Memoranda, Madras*, 73 ff.; *Memorandum, Bombay*, part I, 561-604; *Report, Bengal*, 81-91; *Report, U.P.*, 7-8, 87-90.
6. *R. E. C. R.*, 46-7.
7. *Indian Statutory Commission*, I, 352.
8. *Report of the Financial Relations Committee*, para. 14.
9. *The Statesman's Year-book 1930, 1931, 1932, 1933, 1934*, and 1935 section on 'British India.'
10. *India in 1924-25*, 50.
11. Address to the Indian Legislative Assembly on its inauguration, February 9, 1921, reprinted in Keith (Ed.), *Speeches and Documents*, II, 335-43.
12. *India in 1921*, 31-118; *India in 1922-23*, 252-99.
13. Sir John Cumming, (E.), *Political India* (London, 1932), 63.
14. Generally known as the Gandhi-Irwin Pact.
15. No. 948, dated October 19, 1918, Government of India, *First Despatch*, 136.
16. *Government of India Act*, section 46 (1).
17. The new constitution came into force in Burma on January 1, 1923—*Memoranda, Burma*, 565.
18. *Government of India Act*, 1919, section 15 (1).
19. *Census of India*, 1931.
20. cf. Burma 368 per 1000 aged 5 and over, and Bihar and Orissa 53.
21. cf. Bombay 22.6 per cent and Assam 3.4 per cent.
22. cf. Burma with Punjab—*J. S. C.*, 1919, *Minutes of Evidence*, 301.
23. e.g. in Burma, see *Selections from Memoranda*, Part II, 454.

24. September 23 and 29, 1921, February 22 and July 18, 1923, February 18, 1924—*L. A. D.*, II, 956-75 1223-86; III, 2715-36, 4767-90; IV, 349-400, 518-82, 709-69.

25. The recommendations of the majority are in *R. E. C. R.*, 106-14. Of the 46 they made, only 12 may be said to have a direct relation to dyarchy proper, viz., 15, 16, 17, 18, 19, 20, 21, 23, 30, 37, 38 and 39. Of these only seven were accepted and given effect to by the Government—see *Memoranda, Government of India*, IV, 215-90.

26. These figures have been compiled from the Annual Administration Reports of the Governor's provinces and the *Indian Year Book* (Bombay, The Times of India Press, from 1921-1936-37).

CHAPTER IV

1. Devolution rule 10 (a) and (b).
2. Assam and Burma.
3. e.g., *Memorandum, Bihar and Orissa*, 91, *Memoranda, Burma*, 29.
4. *Report, Bengal*, 158; *Official Oral Evidence*, 459.
5. *Memoranda, Assam*, 299-300.
6. *Memorandum, Bihar and Orissa*, 139, 310.
7. *ibid.*, 182, 186-7, *Report, Bengal*, 158.
8. *Report, Bengal*, 158.
9. *Madras—Memoranda, Madras*, 206.
10. *The United Provinces—Report, U.P.*, 196.
11. *ibid.*, 193.
12. *ibid.*, 195; *Memorandum, Bombay*, part i, 456.
13. *P. B. L. C.*, I, No. 6, 353-60; *Memorandum, C.P.*, 11, Appendix XI.
14. *P. B. L. C.*, I, No. 6, 353-5.
15. on clause I
16. *P. B. L. C.*, XXXVIII, No. 3, 361.
17. *Memoranda, Madras*, 261; see also *Memorandum, Punjab*, part i, 67.
18. *Report, Bengal*, 153.
19. *H. C. Deb.* 5 s. 2315.
20. *Memorandum, Bombay*, part i, 461.
21. *Memoranda, Burma*, 577.
22. *Report, U.P.*, 124, 133, 142, 572.
23. *Memorandum, Punjab*, part i, 66-7.

24. *Memorandum, Bombay, part i, 461.*
25. *P. B. L. C., II, 20.*
26. *Memoranda, Burma, 194; Memorandum, Punjab, part i, 76; Official Oral Evidence, 225; R. E. C. R., Appendix 5, 372; Report, U.P., 100.*
27. John Maynard, sometime Executive Councillor in the Punjab, *R. E. C. R., Appendix 5, 372.*
28. *Official Oral Evidence, January 18, 1929, 382.*
29. *R. E. C. R., Appendix 6, I, 102.*
30. *Report, U.P., 572.*
31. Letter to Mr. Bhupendra Nath Basu, Curtis, *Papers, 120-1.*
32. *Memorandum, Bombay, part i, 437.*
33. *Report, Bengal, 127.*
34. *Memorandum, Bihar and Orissa, 154.*
35. *Memorandum, C.P., I, 43, Report, Bengal, 127.*
36. Chapters V and VIII.
37. *Montagu-Chelmsford Report, 1918, para. 233; Government of India, First Despatch, 55; J.S.C., 1919, Report on clause 6.*
38. e.g. *Report, Bengal, 115; Report, U.P., 205.*
39. *Memoranda, Assam, 38-41; Memorandum, Bihar and Orissa, 142-4, 167; Memorandum, Bombay, part i, 474; Report, U.P., 572.*
40. *R. E. C. R., Appendix 5, 286.*
41. *Selections from Memoranda, Part II, 356.*
42. e.g. *Memoranda, Assam, 41; Memoranda, Burma, 252.*
43. *Memoranda, Burma, 268-9; Memorandum, C.P., I, 24, II, 5.*
44. *J. S. C., 1919, Minutes of Evidence, 329.*
45. *P. M. L. C., XLII, 212.*
46. *Selections from Memoranda, Part I, 321-2.*
47. *R. E. C. R., Appendix 5, 16.*
48. *P. B. L. C., I, No. 6, 355-6.*
49. *Report, Bengal, 181.*
50. Section 72-D (4).
51. Section 81-A.
52. Section 81.
53. Section 81 A.
54. Section 72 E(1).
55. Section 72 D(2) (a).
56. *J. S. C., 1919, Report on clause 11; 37 H. L. Deb. 5 a. 1013.*

57. *J. S. C.*, 1919, Report on clause 13.
58. *Memoranda, Madras*, 229.
59. *Memoranda, Assam*, 206; *Memorandum, Bihar and Orissa*, 310.
60. *Memorandum, Punjab*, part i, 66; *Memoranda, Madras*, 230
61. Lord Brabourne's speech at the Bombay Rotary Club, January 18, 1935—*The Hindu*, January 19, 1935.
62. *Memorandum, C.P.*, II, Appendix XII.
63. *ibid.*, 102.
64. *Report, U.P.*, 14.
65. *ibid.*, 192-3, 239-42; *P. M. L. C.*, LXXI, 27.
- 65.^a Cited in *Speeches by The Right Honourable Sir Samuel Hoare*, 1931-35, [London, Eyre and Spottiswoode, 1935], 139-40.
66. *Memorandum, Bombay*, part i, 473-4.
67. *P. Bom. L. C.*, August 16, 1924, March 12, 1925 March 9, 1926; *Memorandum, C.P.*, I, 32.
68. *P. A. L. C.*, July 23, 1927; *Memoranda, Assam*, 232-3.

CHAPTER V

1. *P. M. L. C.*, February 10, 1926—XXVII, 68 ff.; *P. C. P. L. C.*, II, 392-6, 433-50; *Memorandum, C. P.*, II, 18.
2. *Instrument of Instructions to the Governor*, Para. III.
3. *Memoranda, Madras*, 166; *Memorandum, Bombay*, part i, 266-9; *Report, Bengal*, 125-6.
4. *R. E. C. R.*, Appendix 5, 21; *Selections from Memoranda, Part II*, 206.
5. *Report, Bengal*, 127.
6. 38 *H. L. Deb.* 5 s. 124 and 125.
7. Devolution rule 31.
8. *R. E. C. R.*, Appendix 5, 100-2.
9. *Memorandum, C.P.*, I, 84.
10. *Memorandum, Punjab*, part i, 193.
11. *R. E. C. R.*, Appendix 5, 101.
12. *ibid.*, 408-9; Appendix 6, I, 71.
13. e.g. The Nagpur Flag Satyagraha case—see *R. E. C. R.*, Appendix 5, 409.
14. *P. Bom. L. C.*, XXXIX, 1388.
15. *P. M. L. C.*, XXXVI, 180.
16. *P. M. L. C.*, XIX, 327; see also A. P. Patro's (now Sir)

speech at Guntur on August 19, 1924, cited in *R. E. C. R.*, Appendix 5, 35.

17. *P. B. L. C.*, XIII, 479-80.
18. *R. E. C. R.*, 108, recommendation 15 and pp. 80-81, para 90.
19. *R. E. C. R.*, Appendix 5, 275-6.
20. *P. M. L. C.*, XXXVI, 180-1.
21. *Memorandum, Punjab*, part i, 193; *Report, Bengal*, 114-5; *R. E. C. R.*, Appendix 5, 41-2.
22. *Memorandum, Punjab*, part i, 193.
23. *R. E. C. R.*, Appendix 6, II, 347-8.
24. *R. E. C. R.*, Appendix 5, 18
25. *P. B. L. C.*, I, No. 1, 66, 153.
26. *Memoranda, Madras*, 302.
27. For the embarrassing position in which ministers are placed see Letter of the Madras Government to the Government of India, dated July 23, 1924, paragraphs 14 and 15.
28. *R. E. C. R.*, Appendix 5, 91.
29. *R. E. C. R.*, Appendix 6, I, 298-9; Governor's address to the Legislative Council, *P. M. L. C.*, XIV, 3221.
30. *R. E. C. R.*, Appendix 6, I, 381-2.
31. *ibid.*, II, 288.
32. According to a statement made in the Council by one of the Executive Councillors.
33. *R. E. C. R.*, Appendix 5, 372.
34. *ibid.*, *P. M. L. C.*, XI, 1350-1.
35. Chapter VIII, section ii.
36. Chapter X, section iii.
37. *Selections from Memoranda, Part II*, 184; *P. M. L. C.*, XXXVI, 180.
38. *R. E. C. R.*, Appendix 6, I, 13.
39. *Report, Bengal*, 113-4.
40. *P. B. L. C.*, I, No. 1, 151.
41. *Report, Bengal*, 156; *P. B. L. C.*, XIV, No. 1, 126 ff.
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43. *P. U. P. L. C.*, November 4, 1921; *Report, U.P.*, 25.
44. *P. M. L. C.*, XI, 1350-1.
45. *Selections from Memoranda, Part II*, 204.
46. *P. M. L. C.*, XVII, 970-1; XXIII, 600-1.
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4. *ibid., Q. 2203.*
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6. *Official Oral Evidence, 230.*
7. *Government of India's Memorandum in Reports of the Franchise Committee, 1919, etc., 226.*
8. *Devolution rule 36 (1).*
9. *Sir Frederick Gauntlett, Auditor-General, R. E. C. R., Appendix 6, II, 102.*
10. *ibid., 455.*
11. *P. B. L. C., V, 8.*
12. *Memoranda, Assam, 207.*
13. *Memoranda, Madras, 181.*
14. *R. E. C. R., Appendix 6, I, 217-9.*
15. *P. B. L. C., V, 292 ff.*
16. *P. B. L. C., I, No. 4, 43.*
17. *Memoranda, Madras, 182.*
18. *Memorandum, C. P., II, 134.*
19. *Memorandum, Bihar and Orissa, 94.*
20. *Memoranda, Assam, 203; P. Bom. L. C., 152; P. B. L. C., I, No. 4, 187.*
21. *R. E. C. R., Appendix 6, II, 467.*
22. *Reports of the Franchise Committee, 1919, etc., 227.*
23. *ibid., 175.*
24. *Selections from Memoranda, Part II, 11.*
25. *Report, U. P., 42-3.*
26. *R. E. C. R., Appendix 5, 283.*
27. *R. E. C. R., Appendix 6, II, 106.*
28. *ibid., 473.*
29. *ibid., 310.*
30. *ibid., 112.*
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32. *Official Oral Evidence, 231.*
33. *R. E. C. R., Appendix 6, II, 449-50.*
34. *Memoranda, Madras, 179.*
35. *Memoranda, Government of India, IV, 283.*
36. *Selections from Memoranda, Part I, 152.*

37. *ibid.*
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40. *Memorandum, Punjab*, part i, 270-1.
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42. *R. E. C. R.*, Appendix 6, II, 117.
43. *Report, U. P.*, 42.
44. *Memorandum, Bihar and Orissa*, 94.
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46. e.g. Mr. Chitnavis, *R. E. C. R.*, 93.
47. *R. E. C. R.*, Appendix 6, 11, 113.
48. *ibid.*, 103.

CHAPTER VII

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2. The seventeen nominated members from Berar were eligible for the ministry—*Official Oral Evidence*, 523.
3. Resolution passed by the Indian National Congress at Bombay and Delhi, 1918; by the Muslim League, 1918; Moderate Conference, 1918; *J. S. C.*, 1919, *Minutes of Evidence*, Q. 1039 (7), 1040, 1336 (7), 1338, 1585-7, 1716-7, 3623 (7), 3923.
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10. *Report, U. P.*, 21; *Report, Bengal*, 117.
11. *Selections from Memoranda*, Part I, 151.
12. *Reports of Provincial Committees*, 205.
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14. *R. E. C. R.*, Appendix 6, I, 157.
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16. Letter dated July 7, 1924, from the Governor in Council

of the Central Provinces to the Government of India, R. E. C. R., 155-6.

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18. R. E. C. R., *Appendix 6, I*, 217
19. 45-A (d), 46 (1), 49 (2), 52 (3).
20. R. E. C. R., *Appendix 6, I*, 344.
21. R. E. C. R., 27.
22. R. E. C. R., *Appendix 5*, 100.
23. R. E. C. R., *Appendix 6, I*, 364.
24. R. E. C. R., 109, recommendation 20.
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27. *ibid.*
28. Recommendation 20.
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32. *ibid.*, I, 88.
33. *Memoranda, Assam*, 216; *Memoranda, Madras*, 150; R. E. C. R., *Appendix 5*, 372.
34. R. E. C. R., *Appendix 5*, 394.
35. R. E. C. R., *Appendix 6, II*, 160.
36. *Selections from Memoranda*, Part I, 87.
37. Recommendation 16.
38. *Memoranda, Government of India*, IV, 245-6.
39. *Report, Bengal*, 117.
40. P. A. L. C., VII, 155 ff.
41. P. M. L. C., LXXI, 336.
42. e.g. Ambedkar in *Reports of Provincial Committees*, 96-7, Setalvad in R. E. C. R., *Appendix 5*, 92-3.
43. Section 52 (1) and (3).
44. R. E. C. R., *Appendix 5*, 92-3; R. E. C. R., 32-3.
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53. Para. VI.
54. 116 H. C. Deb. 5 s. 2387.
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57. Memorandum, Bihar and Orissa, 92; R. E. C. R., Appendix 5, 412-13, Appendix 6, I, 109-10, 345-6; Report, Bengal, 117-18; Report, U.P., 469.
58. Memorandum, Bombay, part i, 249, 265; Memorandum, Bihar and Orissa, 91; *The Hindu*, December 15, 1934.
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60. Sir Fazl-i-Hussain, in a pamphlet entitled *The Punjabees* quoted in *The Hindu*, July 10, 1936; italics mine.
61. Memoranda, Madras, 146-7; Memoranda, Assam, 214.
62. R. E. C. R., Appendix 5, 146; Memorandum, Bihar and Orissa, 92; Memoranda, Assam, 181-3; 214.
63. Memoranda, Burma, 30-31; Memoranda, Madras, 165; Memorandum, Bombay, part i, 265-6.
64. Para. VII (4).
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66. R. E. C. R., 11.
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68. R. E. C. R., Appendix 6, II, 67; P. Bom. L.C., XXXIX, 1363; Selections from Memoranda, Part I, 12.
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70. Government of India Act, sections 67-A (3) (iii) and (iv), 72-D (3) (iv) and (v), 96-B (1), (2), (3) and (5), 96-C (1), 96-E, 98, 99, 100.
71. Devolution rule 10; *The Civil Services Rules* 10, 24, 25, 27, proviso to rules 32, 40, 42 and rules made by Governors under section 49 (2) of the Act.
72. See also *The White Paper*, Appendix vii.
73. Para. VII (4).
74. Under section 49 (2).
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80. *Memoranda, Burma*, 64; *Memorandum, Bihar and Orissa*, 305; *Memorandum, Bombay*, part i, 269; *Memorandum, Punjab*, part i, 291-2; *Report, Bengal*, 197-8; *Report, U.P.*, 433.
81. *Joint Committee 1932-33, II-A*, 575.
82. *Memorandum, Bihar and Orissa*, 305.
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85. *Selections from Memoranda, Part II*, 10.
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91. *ibid.*
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94. *Report, U.P.*, 33, 35.
95. *Selections from Memoranda, Part II*, 69.
96. *supra* p. 127.
97. *R. E. C. R.*, 42; *P. M. L. C.*, XIX, 839 ff.
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101. *Memoranda, Madras*, diagram facing p. 26.

CHAPTER VIII

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3. *Memoranda, Assam*, 204, 207; *Memorandum, Bihar and Orissa*, 142-4; *Memoranda, Madras*, 150.
4. *Memorandum, Bombay*, part i, 474.
5. *R. E. C. R., Appendix 5*, 370.
6. *ibid.*, 285-6.
7. *P. M. L. C.*, March 13, 1935—LXXVI, 364.

8. Of Sir Provash Chunder Mitter, *R. E. C. R.*, Appendix 6, II, 198.
9. *P. M. L. C.*, March 13, 1935—LXXVI, 364.
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11. *P. B. L. C.*, XIV, 30; *P. U. P. L. C.*, November 4, 1927; Report, *U.P.*, 204; *Memoranda, Burma*, 230, 293-4, 325-6.
12. *Memoranda, Assam*, 30.
13. *R. E. C. R.*, Appendix 6, I, 3.
14. Report, *U.P.*, 190.
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17. Report, *Bengal*, 143.
18. *Selections from Memoranda, Part II*, 192.
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29. *The Bengalee*, August 30, 1927; *The Forward*, March 21, 1928.
30. *P. M. L. C.*, March 13, 1935—LXXVI, 363.
31. *Memorandum, Bombay*, part i, 269.
32. Report of Indian Central Committee, 11.
33. *Official Oral Evidence*, 390.
34. *Selections from Memoranda, Part II*, 12.
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36. *Memoranda, Burma*, 109; *Memorandum, Bombay*, part i, 373; *Memorandum, Bihar and Orissa*, 234; *Memorandum, Punjab*, part i, 233; Report, *U.P.*, 276.
37. *P. B. L. C.*, I, No. 5, 234.
38. *Memoranda, Madras*, 263-4.
39. *Memorandum, C.P.*, I, 50; II, Appendices ix, x.

40. *Memoranda, Assam*, 363; *Memoranda, Burma*, 187, 334-5; *Memoranda, Madras*, 247.
41. *P. A. L. C.*, VII, 167.
42. *P. A. L. C.*, V, 5; *Memorandum, Bombay*, part i, 272, 441, 452, 595.
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44. *ibid.*
45. *Memoranda, Assam*, 223.
46. *ibid.*
47. *Report, U.P.*, 359-60.
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57. *Memorandum, Bombay*, part i, 437; *Memorandum, Bihar and Orissa*, 93; *Report, Bengal*, 116-7; *Memoranda, Assam*, 227.
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81. P. B. L. C., XX, No. 3, 25-6.
82. As required by Devolution rule 6.
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84. P. B. L. C., XVII, No. 4, 193.
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87. R. E. C. R., *Appendix 6, II*, 404-5.
88. P. B. L. C., XVII, No. 2, 20.
89. *Memoranda, Assam*, 205.
90. *Memorandum, Punjab*, part I, 66.
91. *ibid.*; *Report, Bengal*, 120.

CHAPTER IX

1. Under sections 19-A and 45-A.
2. Detailed in section 80-A (3) of the Act and the rules made thereunder.
3. Despatch (Public, No. 24) from the Secretary of State to the Government of India, February 10, 1921.
4. *Government of India Act*, section 2 (1) and (2).
5. The Local Government (borrowing) Rules 3 (1).
6. *Government of India Act*, section 21.
7. 21.
8. No. 1449 E. A. September 29, 1922, *The Gazette of India*, October 7, 1922, Part I, 1216-7.
9. Section 80-A (3) and the Local Legislatures (Previous Sanction) Rules.
10. Section 82 (1).
11. Section 33 and Devolution rule 13.
12. Devolution rule 14 and Rules under section 80-A (3).
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15. Resolution No. 1449—E. A., September 29, 1922, para. 2—*The Gazette of India*, October 7, 1922, Part I, 1216-7.

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19. Government of India, *Fourth Despatch*, para. 6.
20. *Memorandum, Bihar and Orissa*, 95.
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22. R. C. D. F., in *Reports of the Franchise Committee*, 1919, etc., 134.
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25. R. E. C. R., *Appendix 6, II*, 489 ; *Memorandum, C.P., I*, 32.
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28. *Memorandum, Punjab*, part i, 274.
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31. *Report, U.P.*, 56-7.
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33. *Memorandum, Punjab*, part i, 283.
34. *Indian Statutory Commission*, I, 237.
35. *Memorandum, Bombay*, part i, 574.
36. Devolution rule 27 and Schedule III.
37. 29-A, 30 (1) (a) and Part VII-A.
38. Devolution rule 6 under section 45-A.
39. Section 45 (1) and Devolution rule 5.
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45. *Montagu-Chelmsford Report*, 1918, 185.
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48. *Report, U.P.*, 58.
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CHAPTER X

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6. R. E. C. R., Appendix 6, II, 152.
7. Government of India, First Despatch, 180-1.
8. P. M. L. C., XV, 121.
9. Reports of Provincial Committees, 94.
10. Memoranda, Madras, 168.
11. Debates on Indian Affairs, H.L. 1932-33, 246.
12. Selections from Memoranda, Part I, 333.
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20. Memoranda, Madras, 263-4; Memorandum, Bihar and Orissa, 142-4; Report, Bengal, 113-14.
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28. P. B. L. C., II, 20.
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CHAPTER XI

1. P. M. L. C., XXXVI, 181—The Raja of Panagal.
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INDEX

- Abdur Rahim, Sir, 214
Adjournment motions, 82
Aristotle, 229
Asquith, 273
Assam, joint deliberation in, 133-4
- Balfour, Lord, 56
Basu, the Hon. Babu Bhupendranath, 3, 15
- Bengal—
deadlocks in, 67
Diwan in, 4-5
joint deliberation in, 135-42
joint responsibility in, 214-5
reduction of grants in, 83-6
standing committees in, 97
working of the Constitution in, 310-8
- Bihar—
joint deliberation in, 135-42
the Reserved Half and the legislature in, 81
- Bombay—
attitude of the legislature to the Reserved Half in, 88-90
parties in, 267
standing committees in, 97
- Burma—
attitude of the legislature to the Reserved Half in, 88-90
joint deliberation in, 133-4
parties in, 267
- Butler, Sir Harcourt, 101
- Carmichael, Lord, 103-4, 248
Central Provinces, the—
deadlocks in, 67
joint deliberation in, 133-4
joint responsibility in, 215
reduction of grants in, 83-6
standing committees in, 97
the legislature and ministers in, 286
working of the Constitution in, 310-8
- Certification, 44, 107, 109
Chakravarti, Mr., 214, 222
Checks and balances, see dyarchy
Chelmsford, Lord, 11, 15
Chintamani, Mr., 214, 232
Civil disobedience, 67-8
Committee on Division of Functions, the, 39, 41, 329
Communalism, 57-60
Congress—League scheme, the 25
Council Secretaries, 293-4
Cromer, the Earl of, 7, 113
Curtis, Mr. Lionel, 3, 6, 9, 13, 15, 17, 166, 209, 379
Curzon, Lord, 349
- Das, Mr. C. R., 66, 269, 307
Democracy, 229
Devolution rules, 130-1, 177, 211, 237
Division of subjects, 38-42, 126-7
Duke Memorandum, the, 14-5
Duke, Sir William, 13, 14
Dyarchy—
a bird's-eye view of, 69, 73
achievements of, 375-6
adoption of, 35-6
basic principle, 37-8
checks and balances, 54-5
communalism and, 57-60
control from above, 320-44
defects of, 349-75
difficult to work, 364-5
dualism in the Executive, 42-9

- essentials of, 37-5
 forms of, 20-9
 friction under, 363-4
 hopes and fears, 30-5
 introduction of, 1-73
 lesson of experience, the,
 377-82
 meaning of the term, 2-8
 mutual co-operation, 50-2
 origin and development of
 the idea, 9-20
 progress by stages, 52-4
 responsibility under, 265-75
 suspension and revocation of
 transfer, 317-8
 transfer of subjects, 38-42
 working of, the, 75-344
 wrecking the constitution,
 305-15
see also finance
 parties
- Electorate, 276-9, 373-5
 Executive Council, the—
 appointment of, 78
 meetings of, 45-6, 78-9
 ministers and, 152-60
 tenure of office of, 78
see also Reserved Half
- Feetham, Mr., 41
 Feroz Khan Noon, Mr., 221
 Finance—
 financial arrangements, 173-
 83
 financial stringency, 60-5
 funds for the Reserved Half,
 83-8
 Joint Financial Secretary,
 201-3
 joint purse *vs.* separate purse,
 161-73
 Meston settlement, the, 62-4,
 334
 working of joint budget,
 the, 183-8
see also Finance department
- Finance department, the—
 a reserved one, 198-9
 a spending department,
 199-200
 constitutional position of,
 175-81
 examination of schemes of
 expenditure, 190-6
 functions of, 176-81
 ministers' relations with,
 188-201
 part of the Reserved Half,
 181-3
- Gandhi, Mahatma, 66, 67, 68,
 307
 Ghuznavi, Mr. A. K., 214
 Goschen, Lord, 365
 Governor, the—
 attitude to joint responsi-
 bility, 215-21
 a unifying agency, 50-1, 123-5
 powers in respect of reserv-
 ed subjects, 43-4
 powers in respect of trans-
 ferred subjects, 44-6
 sources of his strength,
 235-40
 special powers of, 107-12
 the legislature and, 43-5,
 318-9
vis-a-vis ministers, 223-40
see also legislature
 Reserved Half
 Services
- Governor-General, 324, 329-32
 Governor-General in Council
see reserved subjects
 transferred subjects
 Government of India Act of
 1919, clauses relating to
 dyarchy, 385-90
 Governor in Council, *see* Re-
 served Half
- Hardinge, Lord, 11

- Indian Civil Service, the, 241, 247, 253
 Indian Statutory Commission, the, 63, 67, 71, 334
 Innes, Sir C., 249
 Instrument of Instructions to the Governor, the, 45, 46, 50, 130, 156, 227, 229-30, 232, 236, 245, 299-300.
 Instrument of Instructions to the Governor-General, the, 327
 Irwin, Lord, 360
 Islington, Lord, 29, 128

 Jagat Narain, Pandit, 214
 Jallianwala Bagh, the, 65
 Joint Address, the, 16-7
 Joint deliberation—
 merits of, 149-51
 pitfalls, 142-8
 scope of, 130-2
 texts bearing on, 127-9
 theory of, 51-2
 the practice of local Governments, 132-42
 Joint responsibility, *see* ministers
 Joint Select Committee of 1919, the, 49, 54, 85, 99, 108, 129, 151, 158, 172, 205, 207-8, 210, 225-7, 232, 261, 300, 312, 323
 Jones Law, the, 8
 Justice party, the, 272

 Keith, Prof., 304
 Kelkar, Mr., 220
 Kerr, Sir John, 234
 Khilafat movement, the, 66, 307

 Layton, 184
 Lee Commission, *see* Services
 Legislature, the—
 and the Governor, 318-9
 attitude of, to ministers, 155-60, 283-303
 attitude to taxation, 287-8
 attitude to the Reserved Half, 80-95
 criticism by, 288-9
 enforces responsibility, 294-303
 no-confidence motions in, 295-6, 297-303
 provision of funds for reserved subjects, 83-8
 reduction of grants, 83-8
 sense of responsibility of, 370-3
 standing committees of, 96-8
 the Services and, 255
 see also nominated members.
 Lytton, Lord, 137, 350

 Madras—
 council secretaries in, 293-4
 joint deliberation in, 135-42
 joint responsibility in, 214
 the legislature and ministers in, 286
 Marr, Mr., 192
 Marris, Sir William, 138, 147
 Maynard, Sir John, 143
 Meston settlement *see* finance
 Meston, Sir James, 27
 Meyer, Sir William, 3, 209, 248
 Ministers—
 appointed as Executive Councillors, 240
 appointment of, 43
 attitude to reserved subjects, 151-60
 joint responsibility of, 208-22
 legal responsibility of, 303-5
 no confidence motions against, 297-303
 number of, the, 206
 refusal of salary of, 312-5
 responsibility of, 294-305, 365-70
 salary of, 206-8
 status of, 206-8
 tenure of office, 43
 the Reserved Half and, 97-8, 117-60

- the Services and, 249-55
 see also Executive Council
 Governor
 Transferred Half
- Minto-Morley reforms, the, 10
- Misra, Mr., 215
- Mommsen, 3
- Montagu-Chelmsford Report,
 the, 17-20, 99, 161, 204,
 209, 225-7, 260, 337, 338,
- Montagu, Mr., 16, 17, 52, 88,
 128, 132, 338
- Morley, Lord, 249
- Motilal Nehru, Pandit, 307
- Nationalist Unionist party, the,
 273
- Nation-building departments,
 95, 291
- No-confidence motions, see
 legislature
- Nominated members—
 importance of, the, 258-60
 non-official, 98, 99-100, 103-5,
 263-4
- number of, 98
 official, 98-103, 260-3
 position in regard to trans-
 ferred subjects, 259-65
- Non-co-operation, 66, 307-8
- Panagal, the Raja of, 140
- Parties—
 absence of organized parties,
 281-3
 communal, 272-3
 dyarchy and, 275-80
 importance of, 266
 in Bombay, 267
 in Burma, 267
 in the Punjab, 267
 organization of, 267-9, 272-80
 party loyalty, 274-5
 political, 272-3
 Swarajya party, the, 66-7,
 69-70, 240, 269, 269-71,
 305-15
- Philippines, the, 7-8
- Pitt's India Act, 5
- Plural control, 126
- Provincial Audit Resolution,
 323
- Provincial States, the plan of,
 22-5
- Punjab—
 attitude of legislature to the
 Reserved Half in, 88-90
 joint deliberation in, 133-4
 joint responsibility in, 214
 parties in, 267
- Questions, 82-3
- Rahimtoola, Sir Ibrahim, 25
- Reappropriation, 178, 197-8, 199
- Reddy, Mr. C. R., 411
- Reduction of salary, 295-6
- Rees, Sir John, 351
- Reforms Enquiry Committee,
 the, 71, 138, 184, 200, 202,
 218, 221, 228, 232, 295,
 313
- Reserved Half, the—
 appointment of, 43
 control by the Government
 of India over, 320-34
 control by the Secretary of
 State over, 320-34
 Governor, the, 77-9
 meets the opposition of the
 legislature, 95-112
 tenure of office, 43
 the legislature and, 43-4
vis-a-vis the Transferred
 Half, 117-60
 see also joint deliberation
 legislature
- Reserved subjects
 allocation of funds for, 188
 control by the Governor-
 General in Council, 46-8,
 320-34
 control by the Secretary of
 State, 46-8, 320-34
- Resolutions, 82

- Responsible government, 59, 366
- Restoration of grants, 44-5, 107-8, 109-11
- Rieu, Sir Louis, 93
- Ronaldshay, the Earl of, 84, 137
- Rosebery, 273-4
- Round Table Conference, the first, 67
- Rowlatt Act, the, 307
- Rules of executive business, 121-5, 217-9, 246
- Secretary of State, the—
see reserved subjects
 transferred subjects
- Secretary of State in Council, the right of appeal of the Services to, 245
- Selborne, the Earl of, 38
- Services, the—
 All-India, 241
 Governor and, 236, 245-6
 Lee Commission's recommendations, 241-3
 overlapping of, 255-7
 problems of, under dyarchy, 240-1
 protection of the rights of, 339, 341-2
 rights of, the, 241-7
see also legislature
 ministers
- Sinha, Sir Satyendra (later Lord), 11, 22, 304
- Sly, Sir Frank, 167
- Standing Committees, *see* legislature
- Supplementary questions, 83
- Surendranath Banerjea, 221
- Swarajya party, *see* parties
- Thirlwall, 3
- Times*, the, 304
- Transferred Half—
 appointment of ministers, 204-6
 control by the Government of India, 334-44
 control by the Secretary of State, 334-55
 the legislature and, 44-5, 258-319
see also joint deliberation
 ministers
 Reserved Half
 transferred subjects
- Transferred subjects—
 allocation of funds for, 188
 control by the Governor-General in Council, 46-8, 334-44
 control by the Secretary of State, 46-8, 334-44
 list of, 39-40, 391-7
 temporary administration of, 315-7
- Triarchy, 29
- United Bihar party, the, 273
- United Provinces, the—
 attitude of legislature to the Reserved Half, 88-90
 joint deliberation in, 135-40
 joint responsibility in, 214
 parties in, 266-7
- Veto, 107, 318-9
- Wheeler, Sir Henry, 298
- Wrecking the constitution, 305-15
- Yate, Colonel, 3, 9