

C2

JOINT COMMITTEE
ON INDIAN CONSTITUTIONAL REFORM

[SESSION 1933-34]

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CONTAINING
MEMORANDA

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INDIAN CONSTITUTIONAL
REFORM
BY MEMBERS OF THE COMMITTEE

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RECORD C2

Joint Committee on Indian Constitutional Reform Papers handed in by Members of the Committee

I.—Memorandum by The Earl of Derby, The Marquess of Zetland and Sir Austen Chamberlain on Direct versus Indirect Election

[5TH MARCH, 1934.]

In bringing the question of indirect versus direct election before the Committee on Monday and Tuesday last, we thought that the Committee would desire that that issue should be presented in its simplest form, unencumbered by the other questions which are nevertheless closely associated with it. The discussion, however, convinced us that many of our colleagues found it difficult to decide this issue without knowing how the Upper Chamber was to be constituted if the method proposed in the White Paper for the election of the Upper House were adopted for the Lower. We therefore, venture to submit for the consideration of our colleagues a plan for the constitution of both Chambers on the assumption that the method of indirect election is adopted for the Lower.

Our proposal is that the majority of the seats allotted to British India in the Lower House of the Federal Legislature should be filled in the manner proposed in the White Paper for filling the majority of the seats in the Federal Council of State; that is by the single transferable vote exercised by the members of the Provincial Legislatures. It appears from paragraph 18 of the introduction to the White Paper that, so far as the major communities are concerned, this system is expected to give a very fair communal representation, though it may be necessary to provide non-provincial communal seats for the smaller communities (Europeans, Anglo-Indians and Indian Christians) whose representatives in the Provincial Legislatures would be insufficiently numerous to provide the necessary quota to secure representation in a Federal Legislature elected under this system.

If the Lower House of the Federal Legislature were elected in this way, it would be necessary to devise some other means of forming the Council of State, and after considering various alternatives we have come to the conclusion that the Second Chamber should be composed of representatives nominated in their proper proportions by the provincial Governments and by the Princes. We suggest that the nominations should be for a term of nine years, one third of those chosen retiring every three years. It might be desirable, in order to secure the adequate representation of minorities, that the appointment of, say, one third of the representatives sent from each province should be reserved to the Governor acting in his discretion. In the case of the first Council of State formed under this system, it would be necessary to provide that one third of the members should vacate their seats at the end of the first three years of its life, and another third at the end of the first six years.

The scheme which we have roughly outlined has in its favour three positive advantages:—

(1) It avoids repeating in every stage of the constitution the system of communal electorates.

(2) It would enable the size of both Houses of the Federal Legislature to be kept down to a limit which would not be practicable if direct election were used for either House.

(3) It conforms to the advice of the Statutory Commission and avoids the vices of direct election in such vast areas with such imperfect communications as exist in India.

RECORD C2 (continued)

II.—Memoranda by The Lord Rankeillour

A.—ON THE RELATIONS OF THE TWO HOUSES OF THE FEDERAL LEGISLATURE IN REGARD TO SUPPLY.

[8TH MARCH, 1934.]

The idea put forward in 48 of the Government proposals that the Council of State should be empowered, even provisionally, to restore grants struck out by the Legislative Assembly is completely foreign to our Constitutional notions as to the functions of an Upper House. If, however, the Government consider it justified by the peculiar circumstances of India, I have certainly no objection to make. I think, however, it carries with it the irresistible corollary that the Council of State should have the converse power of provisionally striking out or reducing grants passed by the Legislative Assembly. Otherwise the position would arise that the Council of State could do nothing in the direction of economy except at the price of creating a deficit which they could not fill up. Personally indeed I should favour the power being given to the Council of State provisionally to reject or reduce grants, even though the power of restoring them were withheld.

At the same time I am impressed by the argument that formidable delays might occur in the voting of Supply if Estimates were capable of being bandied about between the two Houses. I submit, however, that the expedient of laying of Estimates before a Joint Session in the first instance would be a remedy worse than the disease. The mere physical difficulties of having three large halls constantly available for legislative proceedings are considerable, and the whole object of a Revising Chamber would be defeated if members of both Houses were promiscuously engaged in the first instance in considering the proposals of the Government. The progress, moreover, of other urgent business would necessarily suffer.

I cannot but think that the difficulties now experienced in obtaining Supply may be due to some degree to Votes on Account not being taken, and I cannot see why the practice which prevails here should not be adopted in India.

Further, it has occurred to me that in cases of disagreement it might be possible to reduce the issues and shorten discussion by the old English constitutional expedient of a free Conference between the Houses. Each House would nominate a limited number of managers to present their case on a disagreement to the other. In so far as the Conference came to an agreement on certain points it would merely be necessary to put the one question in each Chamber that the decision of the Conference be approved. If, however, the Conference came to no complete result, it might at least narrow the issues if in the end it was necessary for a full Joint Session to take place. For the purposes of such a Session it might be provided by rules that each point in dispute should be put and decided after a statement by one of the managers for each House, and such statement might be limited, say, to half an hour.

I make these suggestions with diffidence because the expedient of free Conferences has not been used for nearly a hundred years, but it does seem possible that it might be useful under the new conditions now contemplated.

As to Appropriation Bills, their use in our Constitution is not merely to ensure the greatest possible opportunity for discussing "grievance before Supply," but to give the Treasury powers of borrowing and of what is known as "virement" which are both essential parts of our financial

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system. I think that if Appropriation Bills are not to be adopted in India a permanent provision will be necessary both to allow and to limit "virement," and I also think that borrowing powers during the financial year must be allowed by the Constitution Act both to the Indian Treasury and to the Governor-General at his discretion. The need of the latter provision has already been insisted upon in discussion.

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RECORD C2 (continued)

B.—ON THE COURTS IN INDIA.

[20TH MARCH, 1934.]

The functions of the Indian Courts, both as they now exist and as set forth in the Government proposals, and the powers of the new legislative bodies with regard to them, are somewhat complicated, and it would be impossible to deal with all the points that arise in any memorandum of a reasonable length.

The position is set out in Volume 3, Record III, published by order of the Select Committee, to which I would refer anyone who wishes to go in detail into the matter. I think, for the purposes of this paper, it is better to begin with Appendix VI of the Government proposals, which sets out the lists of subjects with which the Federal and Provincial Legislatures can deal. Item 63 of list one gives the Federal Legislature power to deal with the "jurisdiction powers and authority" of all Courts in British India from the High Court downwards with regard to Federal subjects. The result of this provision seems to be that the new Federal Legislature could take away the jurisdiction and powers of the High Court and distribute them among the lower Courts as regards all Federal subjects, and can equally forbid or restrict appeals as regards those subjects to the High Court from the lower Courts.

On turning to the Provincial list, Item 28 gives the Provincial Legislature general powers over the administration of justice, including the "constitution and organisation" of all the Courts in the province below the High Court. It would appear from this that the Legislature could pass what it chose concerning the qualifications for the magistracy and apparently also the grouping and subordination of different classes of magistrates and re-constitute the system of the officers and attendants about the lower Courts. By Item 29 they could add to or deduct from the competence of the Rent and Revenue Courts, and by Item 30, they could—as regards provincial subjects—add to or take from the competence and powers of all Courts up to and including the High Court, and confer these powers elsewhere.

Turning to List 3, both the Federal and the Provincial Legislature could likewise alter the competence and powers of all Courts up to the High Court with regard to what are known as the "Concurrent" subjects.

I submit that these proposals are open to serious risk of the Courts suffering from political influence and that it is necessary to put the High Courts on a permanent basis of authority, unalterable by at any rate the Provincial Legislature. This should be done in reference, not only to their competence to hear and decide cases, but with regard to their powers over the lower Courts. In this connection I would invite particular attention to Paragraphs 12 and 13 of Record 3 which I have cited above and in which allusion is made to an anxiety widely felt. It is perfectly true that the present control of the High Courts rests largely upon convention and that

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the provincial authorities have at present powers of interference, but the danger herein latent would be aggravated by the changes in Provincial Government. I suggest that the Convention should be translated into legislation if the prestige of the Courts, in the eyes of litigants, is to remain unimpaired. This legislation should comprise all provinces even where the Convention is not in force and even when the Provincial Legislature has already laid down rules as to communal representation on the Bench, as seems to be the case in the Punjab.

A difficult question arises when it is necessary to set up a special Tribunal to deal, for example, with terrorism, and where it is desirable that the sanction of the Provincial Legislature should be obtained to the innovation. I suggest that this should be done only with the previous leave of the Governor on the instructions of the Governor-General. I have been informed that a special Court set up in Bengal was, in fact, instituted on the motion of the Central Government, and that this might serve as a precedent, but I do not say this of my own knowledge.

As regards the powers of the Federal Legislature over the High Courts, I suggest that any change should require the previous consent of the Governor-General and that any Act of the Legislature in this regard should lie on the table of both Houses of Parliament with opportunity for a "prayer" to be moved against it.

With regard to the *constitution* of the High Courts, the Government proposals appear to safeguard it from undue influence, but I think, even here, it would be well to insert words that the recommendation for appointment by the Secretary of State should come from the *Governors* and not from the *Governments* in India.

With regard to appeals to the Privy Council, no doubt the rights in this matter possessed by Indian litigants have often been abused. On the other hand, there is evidence to show that justice is not always secure if the High Court be the final Court of Appeal. I submit that the right to appeal should not be curtailed, at any rate in cases where it is made contingent on "special leave". I would add that it is not clear in all cases how the judgments of the Federal, or if there be one, the Supreme Court, are always to be executed in the Provinces. This, however, is only one instance of the difficulty of enforcing Federal decisions and would, perhaps, have to be considered in connection with the general relations of the Federal Authorities and the Provincial Executive.

The object of these criticisms is to secure that, so far as humanly possible, the prestige of the High Court shall not diminish, that the administration of justice shall not vary from Province to Province, but shall be of a uniformly high standard throughout India, and that the tradition of British impartiality shall survive the inevitable changes which provincial autonomy would bring about.

20TH MARCH, 1934.

RECORD C2 (continued)

C.—ON SPECIAL POWERS REQUIRED IN RELATION TO DEFENCE.

[11TH OCTOBER, 1934.]

I feel bound, even at this stage, to draw attention again to the real difficulty created by paragraph 96 of the Report. This paragraph if translated into a Section of the Constitution Act would confer upon the Governor "a special power over and above his special responsibility" and empower him to assume charge of any branch of the Government under

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certain conditions. On the principle "inclusio unius est exclusio alterius" I submit that this provision would have to be interpreted as preventing him from assuming such charge unless these conditions were present. But the Committee have been repeatedly assured that the Governor in the discharge of his special responsibility can do anything that a Minister does, which must mean that he can administer a branch himself. I cannot see how these two positions are reconcilable.

This inconsistency, if I am right, may cause embarrassment in various directions but particularly in that of Defence. Paragraph 172 of the Report would enable the Governor-General to issue directions to the Provincial Government if the frontier was in danger, but would not enable either him or the Governor to assume charge of any branch of Government. But discussion has shown that there may be delay, lukewarmness or recalcitrance in carrying out such directions and meanwhile vital interests may suffer. It is true that the Governor-General and the Governor would not be in the helpless constitutional position of Lord Milner in 1899, but they will not have the immediate "Dora" powers which it may be vitally necessary for them to possess.

11TH OCTOBER, 1934.

RECORD C2 (continued)

III.—Memorandum by The Earl of Derby and Sir Joseph Nall

[14TH MARCH, 1934.]

1. We have been asked to furnish some form of words dealing with commercial discriminations, which might be used as a basis for consideration and discussion with the aim, eventually, of placing a suggestion in the hands of the Joint Select Committee.

2. We have prepared a draft formula, but we do not think the merits or demerits of our suggestion can be adequately examined and weighed without some accompanying explanation, which it is the object of this memorandum to afford.

3. We approach the problem from the point of view of United Kingdom trade generally, and not merely from that of the Lancashire cotton industry, although our knowledge of the issues involved arises almost exclusively from our contact with the cotton trade. Our formula, however, is a "U.K. trade" formula, and not a cotton one. In our view provisions in a constitution can only be concerned with general principles and never with their particular application. Furthermore, past history, both distant and recent, makes it in the highest degree inexpedient from a political point of view that, in an Act embodying a new constitution for India, there should be any mention by name of the British cotton trade.

4. There are two other great British interests which properly arise in any consideration of the possible dangers from Indian discrimination. One is that of British Shipping: the other is that of British Capital.

British Shipping has, of course, a profound, if indirect interest in trade in goods of U.K. origin, and in that connection may well be consulted on the trade aspects of the problem of discrimination. It has also direct interests which are peculiarly its own, particularly in such matters as the prevention of flag discrimination. British owners of capital which is already or may be invested in enterprises within India have obvious interests in the problem.

It is of great importance to observe, however, that whereas British Shipping and British Capital must be protected from discrimination in a wide field of potential legislative and administrative activity—indeed, an almost unlimited field, embracing company law, factory legislation, internal taxation, subsidies, and so on throughout the whole range of a Government's internal economic policy—British trade, on the other hand, is only affected by tariffs or other regulations applied by imports.

5. Although one field is thus a broad one and the other quite a restricted one, it nevertheless seems to us that by reason of a combination of legal and political reasons, the broad field is far easier to deal with than the narrow. In the first place, the principles of the prevention of or protection against legislative or administrative discrimination of persons or their property within the frontiers of any country, are the subject of innumerable precedents, in our relations with foreign and Empire countries. The existence of such precedents removes any political or psychological difficulty in inserting suitable provisions in the Indian Constitution. H.M. Government showed itself willing in principle to deal with this matter when it inserted Paragraphs 122-124 in the White Paper. But the paragraphs are

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not as comprehensive as they might well be, and the reservations in 124 seem to whittle down somewhat a principle which could be stated without reservation. It would appear to be a case where expert lawyers could readily offer a re-draft, and we do not regard it as in any way part of our problem. We should like, however, to say that we consider the simplest and most direct form of words should be ultimately adopted for the reason that any attempt to specify details raises the danger of the unspecified contingency arising.

6. When you turn to the prevention of discrimination against British Trade, you face a problem of quite a different order. It raises acutely the vexed political question of Tariff Autonomy, and it involves considerations of revenue as well as of fiscal policy.

The Lancashire cotton industry has been the particular U.K. interest round which this issue has revolved. It has recently succeeded (one hopes permanently) in placating Indian susceptibilities, and no sensible person would wish to waken sleeping dogs by unnecessarily provocative action on this question of discriminatory tariff action.

Nevertheless, something quite definite and explicit must be inserted in the Act, because the absence of a safeguard would be a grave neglect of Britain's most vital interest.

7. The attitude of the Indian Delegates when the Lancashire Cotton Evidence was taken by the Joint Select Committee on 3rd November showed that they had no particular hostility to certain over-riding powers being exercised by the Governor-General to prevent discrimination. It may subsequently be of the utmost help to be able to describe our suggestions as conforming with the general trend of Indian comment on that occasion.

In any event, the obviously best plan in all the circumstances is not to raise old troubles by talking of Tariff Autonomy, but to seek a definition which will confer on the Governor-General—always the servant of the British Crown—the power to protect and preserve British interests.

8. It is presumably expedient to make what we want an addition to something already in the White Paper. Section 18 of "The Proposals" seems to be the proper place at which to introduce an amendment. We attach a proposed new wording of sub-paragraph (e) with which Section 18 ends. (See *annexure*.)

9. The suggested provisions regarding Tariffs are, it is submitted, nothing more than principles of equity which can properly be enshrined in an Act regulating the relations of the two countries at the moment when one is handing over fresh powers to the other, and in the degree to which Indian opinion will doubtless assent to the safeguards against discrimination, they partake more of the character of agreed principles such as two completely independent parties normally insert in a Treaty.

10. The principal objection will no doubt be that our draft is unduly lengthy, thus calling special and undesirable attention to the matter.

To that we can only reply that in this case, unlike that referred to at the end of our paragraph 5 above, specific mention of the contingencies to be provided against (involving a lengthy draft) was unavoidable for the reason that such short phrases as "discriminatory tariffs", and so forth have no absolute meaning, but are only relative and would therefore be entirely useless. This difficulty arises partly from the fact that the particular problem we are dealing with is entirely without precedent in international or inter-imperial relations.

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ANNEXURE.

DRAFT OF REVISED PARAGRAPH 18 (e).

(e) The prevention of commercial discrimination as between subjects or residents of different parts of the British Empire generally, including *inter alia* the following:—

(i) discrimination in legislative or administrative measures affecting commerce or industry within India or shipping at or in Indian ports.

(ii) discrimination against U.K. products as compared with those of other countries by tariffs or other measures to regulate imports whether directly by differential rates of duty, according to origin, or indirectly by differential treatment of various types of product.

(iii) discrimination against U.K. interests as compared with Indian interests by the establishment on goods of U.K. origin of levels of import duty or other restraints of a prohibitory or penal character in excess of the proved and equitable requirements of the economic situation in India.

(iv) discrimination such as would arise by action in violation of any agreement subsisting at the time between the Governments of India and Great Britain as regards the rates of tariff and margins of preference applicable to U.K. goods whether in general or in particular cases.

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RECORD C2 (continued)

IV.—Memorandum by Mr. C. R. Attlee on Responsibility at the Centre

[15TH MARCH, 1934.]

I. In submitting these suggestions to my colleagues I realise that they are only suggestions which will require working out. I am conscious of many objections, but I submit that many of them will be found to apply as much if not more to the scheme proposed in the White Paper.

II. I will set out briefly the reasons on which I base my suggestions. Indian politicians are for the most part convinced that the system of Government obtaining in this country, whereby a Cabinet dependent from day to day on the vote of the legislature is the only system of responsible government, or at least that it would be derogatory for Indians to accept anything different from what for the purposes of this note I will call the Westminster system.

III. Under the provisions of the White Paper we are in effect giving in the provincial sphere some dozen opportunities for Indian politicians to try by experiment how far this system or an adaptation of it is possible in an Oriental environment. The assumption of the White Paper is that it is desirable also to make the same experiment at the Centre. While I accept the necessity of providing for responsibility at the Centre, I am not persuaded that it is either possible or desirable to follow the Westminster model.

IV. I will briefly state my reasons:

(1) The immense population of India and the consequent difficulties of that effective connection between elector and elected which is of the essence of the Westminster system.

(2) The subject matter of Central administration and legislation is too narrow to provide the basis for it. The Westminster system is designed for a unitary not a federal State. The subject matter of Parliament embraces almost all the political interests of the people. In India 90 per cent. of the interests of the ordinary man are dealt with in the provincial sphere.

(3) The essence of the Westminster system is its flexibility which has allowed of its adaptation to new problems and the needs of new political classes. This quality is lost as soon as rigidities are introduced into its structure. The Committee has in fact been endeavouring to reduce, to a written form, and thus make rigid, the flexible rules and conventions which have been moulded to suit the occasion in this country. It is, in addition, hard to incorporate a mass of safeguards without the same effect.

(4) The working of the Westminster system depends on stable divisions on party lines. (A multiplicity of parties or groups makes its working difficult. It functions best when there are only two.) It depends also on a homogeneous ministry. Neither of these conditions is likely to be found in India.

(5) The division between elected representatives and State delegates is crossed by communal and economic cleavages. A barren and undesirable anti-British nationalism is the only basis which might bring these divergent elements together.

(6) The constituent elements of a Ministry are bound to be heterogeneous. Indeed, this is contemplated. Experience in the provinces has shown that while individual ministers may have a following, ministries as a whole rarely have support as a team from a majority. Indeed, followers are apt to cease to follow a leader when he becomes a minister.

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(7) Owing to the nature of the federation the members of the legislature will not be equally concerned in the territory of the federation. The discussions with Indians have shown the difficulty of ensuring that the will of British India shall prevail in purely British Indian matters under the Westminster system. I do not think that under the British system of responsible government an "in and out" provision is practicable.

(8) The danger of a large number of members with very little to do is not unknown at Westminster, and would seem to be inevitable at Delhi under the White Paper proposals.

V. For these reasons I think that the model should be rejected. I do not think, however, that an exact precedent can be found elsewhere. The German Reich of pre-war days shows the federation of units with differing internal constitution. The U.S.A. gives an example of a great federal State. In India, however, there is lacking the king post of those structures, i.e., an executive deriving its mandate separately from the legislature, in one case the Kaiser, in the other the President. Switzerland, despite its small size, is a federation and gives an example of an executive composed of persons of various political views responsible to and chosen by a legislature. I think that it is possible to combine certain features from the latter two countries.

Requisites at the Centre.

VI.—(1) A stable executive. (This is very difficult to obtain under a group system, vide France.)

(2) A constitution which will teach responsibility not irresponsibility to the members of the legislature.

(3) A real connection between the Centre and the Provinces. (It will be dangerous if the only link is through the autocratic element, the Governors and Governor-General.)

(4) A strong Government, i.e., one which has behind it the force of public opinion.

(5) A constitution which has within itself possibilities of development and sufficient flexibility to allow experience to correct undesirable and unexpected results. The less detail embodied in what is confessedly an experiment the better.

The Essence of the Plan.

VII. The main idea is to place responsibility on the members of the legislature. (Without discussing the pros and cons of electoral systems I would state that one reason for my advocacy of indirect election by provincial councils is that I conceive the Central Legislature as composed of representatives of federal units not of blocks of population.) In other words, the elected representatives shall have power to alter policy without altering the personnel of the administration.

VIII. In the Westminster system as practised at present, the executive is in fact through the operation of the Party system the master not servant of the legislature. The Cabinet though formally selected by the Crown is really composed of the leading members of the Party in a majority. Its maintenance in power is due to the discipline of the Party machine, backed by the power of dissolution. This fact is obscured in the minds of most Indians through their addiction to the reading of theoretical constitutional text books.

IX. I suggest for the reasons given above that a stable ministry with a regular body of supporters in the legislature is unlikely under Indian conditions. Therefore, I desire to make the members responsible.

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The plan suggested.

X. When the legislature has been properly constituted of the members from the States and Provinces, the Governor-General will consult with leading members in order to find out what combination of persons would be likely to command the confidence of the legislature. (This might be a matter of some difficulty. He would be much in the same position as a French President.) He would, no doubt, have to include State as well as provincial members, Moslems as well as Hindus.

XI. Having decided on his Ministry and on the members who are to have charge of the reserved departments, he would submit the Ministry as a whole to the legislature for a vote of confidence.

XII. I do not think that it is necessary to specify that this majority should be any particular fraction. The Governor-General would have in practice to satisfy himself that it was adequate. This vote would signify the acceptance by the legislature of the Ministry, and thereafter the Ministry should remain in office for a definite term, say, one or two years, during which period it could only be removed by a definite vote of No Confidence carried by a two-thirds or other fractional majority as decided. Thenceforward the Ministry would be more in the position of the Swiss Executive than of the British Cabinet. It would be a body composed of heterogeneous elements, but would be subject to the very powerful influences which tend to bring solidarity to a body of men in positions of responsibility. Formal joint responsibility would not be explicitly laid down, as indeed it is not in most constitutions, but the acts of the Government would be the acts of all. This system actually obtains in the Provinces to-day. The Ministry would not deem it necessary to resign on every adverse vote, nor would the individual minister, unless he deemed the matter of vital importance or as a censure on his character not his policy, the Minister would accept the verdict of the legislature.

XIII. The legislature would have to take responsibility for its actions. I assume that in the early stages of the new constitution the Governor-General will preside at meetings of his Cabinet and that only at a much later stage will this practice fall into desuetude. There should, however, be a first minister who would preside in the absence of the Governor-General, and lead in the legislature. He should hold a portfolio without too heavy an administrative content.

XIV. For the working of the legislative machine I suggest the setting up of a number of standing committees, some of which should be statutory. These committees should correspond with the functions of the Central Government. At their meetings the Minister should preside or, in the case of reserved subjects, the Official Member. It is in my view undesirable to have the duality which obtains in some constitutions between the Minister and the Chairman or rapporteur of the Committee. The Committees should sit with permanent officials in attendance. The Minister would have to get approval for his estimates from the Committee. The object of the system is to bring the members of the legislature into actual contact with administrative problems. The sittings of the Committees would to a large extent take the place of our "Supply Days". I think the control over administration would be more effective than under our system. The ventilation of important questions which should be discussed on the floor should be provided for by time being given for their discussion without formal votes of censure. The procedure being more like that of "the demand for papers" in the House of Lords procedure.

XV. I think that the Committee stages of Bills should wherever possible be remitted to the appropriate functional committee which should have attained a certain familiarity with the subject although other members might

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be added for particular bills. Second and third reading would, of course, be taken in the full sitting of the legislature. The Report Stage should be confined to Government amendments. The difficulty of dealing with bills relating only to British India could be met by remitting them to committees composed only of British Indian representatives or by restricting the right of vote to them. It might well be done by convention. The objection to "in and out" arrangements does not apply where "confidence" is not involved in every vote.

XVI. Reserved subjects such as Defence would equally have their committees wherein members would have the right to obtain information, criticise and make suggestions, but the powers of the members to vote would be restricted. Thus an informed opinion on Defence matters should be created. The same would apply to foreign policy excluding, of course, the relationship of the Governor-General and the States. I should myself prefer to see foreign policy a transferred subject. There should be a Budget Committee to which, after debate in the Legislature, the Budget should be remitted for examination in detail. A defeat on a proposal in the Budget would not necessarily lead to the resignation of the Ministry. If a tax should be rejected, it would be the duty of the Committee to find an alternative or suggest appropriate economies. The legislature itself should be made to feel its responsibility in its demands for expenditure and its provision for raising money.

XVII. It will be realised that in the background are the special powers and responsibilities of the Governor General which should, however, as far as consistent with safety not be used to allow the Legislature to escape its responsibilities.

XVIII. I apprehend that most legislation at the Centre would be introduced as private members' bills. It does not appear to me that a Ministry inevitably heterogeneous is likely to produce an extensive legislative programme, especially in view of the fact that so large a part of the legislative field is either in the provincial sphere or can only be made effective by provincial action.

XIX. In making these suggestions I have gone into some detail in considering the working of the machine in order to give my colleagues a picture of what is intended. It will be observed that the actual provisions which it would be necessary to insert in a bill are few, although some additions might have to be made to the Governor General's instructions. Most of the results claimed by me arise from the simple provision as to the selection and continuation of the Ministry. On the other hand, a great many detailed provisions which have been under discussion would be omitted.

XX. The system proposed is not fool proof. Given factious opposition it would break down, but I claim that the methods outlined above will tend to discount factious opposition.

I consider that the scheme gives possibilities of development, being free from rigidity.

In my view, though it is not an essential, a single chamber is more suitable for this kind of constitution.

I also think that the need for a close liaison with the provincial governments, especially in the matter of finance, makes indirect election by the provincial councils more suitable than direct election. The existence of the councils as electoral colleges in permanent existence should be a check on irresponsibility.

In conclusion I would apologise to the Committee for the roughness of this Note, but my available time is very scanty, and I wished to place the idea as early as possible before the Committee.

15TH MARCH, 1934.

RECORD C2 (continued)

V.—Memorandum by The Lord Hardinge of Penshurst on the Anglo Indian Community

[17TH APRIL, 1934.]

The future position in India of the Anglo-Indian and Domiciled European Community under a reformed constitution is one that requires serious attention. Sir H. Gidney, in giving evidence, placed his views before the Joint Committee but no decision has so far been taken as to the requisite steps for the protection of this small but important minority beyond its treatment as one of the minorities provided for in the White Paper.

Nobody will dispute the responsibility in the past and the present of the British Nation for the existence of this Community and the very exceptional services rendered by Members of this Community in times of danger and stress during the past 100 years. It is hardly necessary to recall the names of Skinner, Hearsey, Rivett-Carnac, and others to remind the Committee of the loyalty of Anglo-Indians and the heroic part they played during the Mutiny. This loyalty they have always displayed, and during the Great War almost 80 per cent. of the male adult members of the Community were engaged in every theatre of the War, while many of the remainder served in the Indian Defence Force to maintain order in India in the absence of British and Indian troops. It is not out of place to recall the fact that Lieut. Robinson, V.C., who brought down the first German Zeppelin in England, and Lieut. Warneford, V.C., who brought down a German Zeppelin in France, were both members of the Domiciled Community.

Even since the War, during the riots of 1919 in the Punjab, when disloyal Indian telegraphists cut telegraph wires and mutilated official messages, the Governor had to fall back upon Anglo-Indians to replace them.

The Community is a small one, numbering about 200,000 and its chief avenues of employment in the past have been in the Railways, Telegraph and Customs Services. It is they who have built up and worked these services during many past decades, and who consequently deserve consideration from the Government of India, but who now, in order to satisfy the political demands of the more powerful communities, are being slowly but surely sacrificed on the altar of political expediency.

The special position of the Community was recognised in the Montagu-Chelmsford report, in the report of the Statutory Commission, in the Government of India Despatch of September, 1930, and at the First Round Table Conference, and in all these reports emphasis was laid on the obligation of the Government towards the Community and the necessity for special consideration being given to their claims for employment in the Services. Nevertheless, owing to Indianisation and to retrenchment, the situation of Anglo-Indians has of late years been steadily growing more serious and the percentage of posts held by them in the Railways, Telegraphs and Customs, has been gradually diminishing. In order to arrest this the only course would be to prevent for a certain number of years the substitution of Indians for Anglo-Indians and to reserve a fixed number of appointments in those services for members of the Anglo-Indian Community. There appears to be no valid reason why this course should not be pursued as part of the system of Defence which comes under the Viceroy's responsibility, since it is hardly necessary to stress the vital importance of maintaining an adequate number of loyal employees on the staffs of the Indian Railways and Telegraphs for the transport of troops during an outbreak of War on the Frontier or during civil disturbance.

MEMORANDUM BY THE LORD HARDINGE OF PENSHURST.

As an illustration of the dangers resulting from Indianisation I am informed that on the North-Western Railway of India, which is a strategic railway traversing the whole of the Northern frontier, the personnel is being rapidly Indianised, and that now out of a total Railway Telegraph cadre of about 1,000 employees the Anglo-Indians hold only 0.5 per cent. of these appointments. The danger of such a situation can hardly be exaggerated since, however loyal the Railway Staff might be, a disloyal Telegraph Staff could disorganise military traffic within a few hours. This would mean a repetition of the situation in 1919.

Nor is it less important that amongst the employees of the Customs service there should be a strong and loyal Anglo-Indian element to check the smuggling of arms and ammunition into India at the Ports. Only recently the Government of Bengal has passed a "Smuggling of Arms Bill of 1934" to prevent the entry of arms and ammunition through the ports of Calcutta and Chittagong, which eventually found their way through recognised brokers into the hands of terrorists. This, however, will not prevent the entry of arms and ammunition at other Indian ports which has been rendered much more easy by the gradual Indianisation of the Customs Service.

It is very obvious that safeguards should be imposed in the new Constitution for the protection of the Anglo-Indian Staff which has always proved its loyalty in the three security Departments, Railways, Telegraphs and Customs, the two former in connection with the defence of India and the latter for the protection of civil officials from assassination.

To preserve the economic future of the Community the following clause is suggested for incorporation in the new Constitution Act:—

"That as long as appointments are made on communal representation, adequate weightage, with due consideration to their present numbers, be given to the Anglo-Indian and Domiciled European Community regarding its future employment in all Government Services and that instructions be given to the Governor-General, Governors and Public Service Commissions to put this into effect."

Unless such a safeguard is inserted in the new Act the fate of the Community is doomed, and India's gain will be their destruction.

It will not be out of place to record here the assurance given by H.R.H. the Prince of Wales to an Anglo-Indian Deputation when he visited India in 1922:—

"You may be confident that Great Britain and the Empire will not forget your community, who are so united in their devotion to the King Emperor and who gave such unmistakable tokens of their attachment to their Empire by their sacrifice in the War."

Again, in the Government of India's despatch of September, 1930, under the heading of "The Anglo-Indian Community" the following sentence occurs:—

"A special obligation, we think, rests upon Parliament, before relaxing its own control, to ensure, as far as may be practicable, that the interests of the Anglo-Indian Community are protected."

Surely, in its own interests, Parliament will not repeat the error made in Ireland in regard to the Irish Loyalists of the South!

17TH APRIL, 1934.

**RECORD CONTAINING MEMORANDA
SUBMITTED TO THE JOINT
COMMITTEE ON INDIAN CON-
STITUTIONAL REFORM BY MEM-
BERS OF THE COMMITTEE**

[SESSION 1933-34]

Die Mercurii, 21° Novembris, 1934

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