

INDIAN CONSTITUTIONAL REFORM

A REPRINT OF IMPORTANT ARTICLES FROM
The Twentieth Century ON THE INDIAN
CONSTITUTIONAL SCHEME BY WRITERS OF
AUTHORITY AND EMINENCE, FROM THE TIME
OF PUBLICATION OF THE JOINT PARLIA-
MENTARY COMMITTEE'S REPORT TO THE
PASSING OF THE GOVERNMENT OF INDIA ACT

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PREFACE

The present symposium consists of articles concerning the Government of India Act which appeared originally in the "The Twentieth Century" and attracted wide attention both in India and England. They vary widely in form and content, from the preliminary survey of the original proposals of the Joint Parliamentary Committee by Kerala-putra to the masterly presentation of the Act itself by the Marquess of Lothian. In dealing with a subject, which was by its very nature, highly controversial, this lack of unity in point of view, was perhaps inevitable. Nor can it be claimed that all the opinions expressed in these articles will receive universal or even general approval.

But one thing may definitely be claimed for this book. It contains the views of men who have a claim to be heard. The opinion of experienced statesmen like the Rt. Hon. Sir Tej Bahadur Sapru and the Marquess of Lothian on any constitutional question is entitled to respectful consideration. On the question of the Indian Constitution, they speak with unequalled authority. References were made to Col. Sir K. N. Haksar's article (as to Sir Tej's) in the House of Commons' debates. And of Kerala-putra's article it may be mentioned here that in the first public speech that Sir Samuel Hoare made in support of the proposals of the Joint Parliamentary Committee, he drew attention to his article and quoted extensively from it with approval.

Though the Act is now on the Statute Book, the embers of controversy have not yet died down. The

question whether the Reforms should be worked is still agitating an important section of Indian public opinion. The states on which the Federation of India depends have yet to declare their views. In the circumstances the reprint, in chronological order, of these articles of constructive value in a book form, will, it is hoped, serve a useful purpose.

I. D.

The Report of the Joint Parliamentary Committee on Indian Constitutional Report was published on Nov. 22, 1934. It was inevitably the basis of the Government of India Act, 1935.

THE JOINT PARLIAMENTARY COMMITTEE'S REPORT

By KERALA-PUTRA

Nothing stands out clearer, on an examination, however superficial, of the Report of the Joint Parliamentary Committee than the fact, that the proposals embodied in the Report are in the main the result of the work of the Round Table Conference. The Committee's report presents us with a completed picture, but every one of the proposals discussed in it was put forward, scrutinised and elaborated either at the Round Table Conference itself or at its numerous sub-committees. It is no doubt true that many of the details are different from what the delegates at the Conference contemplated but it cannot be denied that the plan, groundwork and even the main structure of the edifice as presented to us in the Report are the same as were settled at the Conference. It argues a great deal for the wisdom, foresight and statesmanship of the leading representatives of India that a Parliamentary Committee consisting of some of the most experienced statesmen in British public life, after close scrutiny and examination, extending over 15 months, have been unable more than to touch up here and there the scheme outlined by them.

The point of view from which the constitution proposed by the Joint Parliamentary Committee should be examined is how far within the frame-work of the three principles, Federation, Central Responsibility and Safeguards, accepted by all the parties concerned, the proposals provide for the Government of India by its own nationals. The fundamental question is not the form of Government, or the details of administrative machinery though they are important, but the extent of power transferred from Britain to India.

In the discussions on constitutional reforms we have unfortunately not been able often to see the wood for the trees. What is it that Indian nationalists are asking for? It is obviously not for any detailed scheme of Government, for on this question, there must be difference at all times in every country. Equally, it is not for the severance of the British connection and the immediate assumption of all the responsibilities of an independent nation, for even Mahatma Gandhi as representing the Congress accepted Federation, Central Responsibility and Safeguards as the triple basis of the new constitution. What India demands and what Britain is pledged to give her

is the right to be the mistress in her own house to the fullest degree consistent with her partnership in the British Commonwealth. Stated briefly, the Indian claim is for the transference of effective power in the governance of India from British to Indian hands.

Therefore, what we have to satisfy ourselves with is that the proposals contained in the Joint Parliamentary Committee's Report ensure to Indians immediately a substantial measure of power in all spheres. It is essentially from this point of view that the constitution proposed for the acceptance of Parliament in the Joint Committee's report has to be examined.

Ordinarily, a Joint Parliamentary Committee is appointed to report on a Bill already introduced into Parliament. In this particular case, Parliament modified the procedure and allowed the White Paper embodying the results of three Round Table Conferences to be taken as the basis of discussion. A further and significant change in procedure was the association as delegates of Indian representatives with the Joint Parliamentary Committee. Though therefore technically the Joint Parliamentary Committee is a body subject only to Parliament, and as Mr. Neville Chamberlain recently pointed out, has full powers to put forward independent proposals, in actual fact, it was bound by the main principles of Federation, Central Responsibility, and Safeguards and the important consequential proposals set forth in detail in the White Paper. The Report accepts in the main the draft scheme of the White Paper and the modifications proposed in it, which are discussed below, do not vitally affect the scheme in its general conception.

The main modifications recommended by the Report are :—

1. Second Chamber in Bombay and Madras.
2. Indirect election to the Federal Legislature.
3. Strict definition of the commercial safeguard guaranteeing equality of rights for British subjects in the United Kingdom.
4. The right of control of the secret service, especially in regard to terrorism.

From the Indian point of view two questions have to be asked about these modifications. (a) Do they substantially modify the power intended by the White Paper to be vested in the new Government of India? (b) Do they affect the structure of the Federal Constitution as it was evolved in consultation with Indians at the Round Table Conferences? We shall take them one by one.

The White Paper recommended a Second Chamber only for the United Provinces, Bengal and Bihar. The extension of that principle to the Bombay and Madras presidencies cannot be considered a departure from the principle of the White Paper. While it is generally true that provincial legislatures in Federal Constitutions seldom have senates, it is equally undeniable that a Single Chamber Government in provinces which are bigger than most European States is also unprecedented. With complete transfer of power over a very wide

range of subjects to the provinces, which are neither geographically nor ethnologically single units, Single Chamber Government is indeed an experiment fraught with danger. The proposal, though it may be opposed on theoretical grounds by the champions of extreme democracy as providing an entrenchment for vested interests and reactionary obscurantists, cannot be considered either as being a departure from the principles adopted at the Round Table Conference or as being a provision meant to restrict the operation of self-government.

The proposal to extend indirect election to the lower Federal House may also be considered objectionable from the point of view of democratic theory especially as the present Central Legislature is directly elected. There are other objections also which may be summarily stated here. First, if elections to the Federal Legislature are to take place from the Provincial Councils which are elected on purely provincial issues, Federal problems will never come up for discussion before the country. In India experience has shown that provincial elections are governed by purely local considerations. What is required at the Centre, however, is that the legislature should be elected on issues of a purely federal character. Indirect elections would make that impossible. Secondly, dissolution of the Federal Legislature on important issues and appeal to the country for a verdict would not be possible, as the members will not have to go to the country but merely to their Councils where the elections will be on a strictly party basis without any reference to opinion outside. A third point of view has also to be remembered. The interests of the federal government and the provincial governments are not likely in all cases to be the same. If the Central Legislature is constituted of representatives of the provincial legislatures—naturally therefore predominantly representative of the parties in power in the provinces—the Federal Legislature will be more a conglomeration of provincial interests, than a body representing all-India opinion. Unless there is a federal electorate in which electoral battles are fought on purely federal issues, it is almost certain that the federal centre will be weak and unable to cope with the claims and demands of the provinces. These are of course theoretical considerations, and it should not be forgotten that arguments of considerable validity can also be advanced in favour of indirect election. Among such I may mention the following: the size of the federal electorates is bound to be so large as to make elections to the Centre extraordinarily expensive and render them in many cases farcical; the necessity to safeguard the newly won autonomy of the provinces against the tradition of centralisation in India: the wider character of the provincial electorates, which will enable the federal representatives to be more democratic than representatives elected from constituencies of more restricted franchise. In any case the present modification cannot be said to limit the power of the Federation, or to change vitally the form of Government.

The third modification is more important. The Joint Parliamentary Committee has defined the commercial safeguard in the

interests of Britain in precise language. The clause reads as follows :

“The prevention of measures, legislative or administrative, which would subject British goods imported into India, from the United Kingdom to discriminatory or penal treatment.”

One point of importance may be noted at the outset. The clause makes no mention of His Majesty's subjects domiciled in the Dominions or companies registered there. The protection insisted upon is only in regard to the United Kingdom. On this question there has been, as stated in the Joint Memorandum of the British Indian Delegation, a substantial agreement between all sections of opinion from the beginning, the Nehru Report itself stating that “it is inconceivable that there can be any discriminatory legislation against any community doing business lawfully in India.” Mahatma Gandhi at the second Round Table Conference reiterated this statement in even more emphatic terms. Indian opinion had always objected only to the extension of this principle to the Dominions, which by legislation discriminate against Indians. Their point of view with regard to the United Kingdom was that while no discrimination should be made against the subjects of the Crown domiciled in the United Kingdom and against companies registered there, India should have full liberty to develop her industries and for this purpose should be entitled to use the legislative and administrative methods common to all countries. The point to examine is how far this very necessary power is included in the Report and how far it is modified by the safeguard now defined. The Report itself recognises that from the point of view of Indians this is a matter of the utmost importance and explains the position as follows :—

“But in making our recommendations to this end (of defining clearly) we wish to make it clear at the outset that we contemplate no measure which would interfere with the position attained by India as an integral part of the British Empire through the Fiscal convention” (Paragraph 344).

Further they add

“But as it is important that the scope we intend to be attached to the special responsibility so defined should be explained more exactly than could conveniently be expressed in statutory language, we further recommend that the Governor-General's Instrument of instructions should give him full and clear guidance. *It should be made clear that the imposition of this special responsibility upon the Governor-General is not intended to affect the competence of his Government and of the Indian legislature to develop their own fiscal economic policy; that they will possess complete freedom to negotiate agreements with the United Kingdom or other countries for the securing of mutual tariff concessions; that it will be his duty to intervene in tariff policy or in negotiation or variation of tariff agreements only if in his opinion the intention of the policy to contemplated is to subject trade between the United Kingdom and India restrictions conceived, not in the economic interests*

of India but with the object of injuring the interests of the United Kingdom."

Such a safeguard is legitimate, for a penal discrimination of that nature is nothing less than an economic war. It is further provided that provisions should be on the basis of reciprocity (Para 353).

On the vexed question of bounties and subsidies, the Committee's recommendations are on the whole unexceptionable. The Committee accept the principles laid down by the external capital Committee and since followed by the Government of India and they therefore recommend that in the case of companies which were not in existence before 1925

"it may be made a condition of eligibility for the grant that the company should be incorporated by or under the Indian Law, that a proportion of the Directors (which should, we think not exceed one half of the total number) shall be Indians and that the company shall give such reasonable facilities for the training of Indians as the Act may provide" (Para 356).

On the whole it will be conceded that in view of the agitation in British Industrial circles, the Joint Parliamentary Committee have approached this difficult problem in a spirit of moderation and fair-mindedness and their proposals are not altogether unreasonable.

The right of protecting the secret service reports affecting terrorism and placing the special branch which deals with terrorist crime immediately under the control of the governor is not a matter, the rights and wrongs of which can be judged without a full knowledge of the facts. Undoubtedly organised terrorism exists in Bengal and conceivably it may spread to other provinces. That it is a menace to the peaceful growth of Indian political life will be accepted by most people and if special powers, exclusively for that purpose, are suggested, no objection could be taken so long as the general powers of provincial administration are not ordinarily interfered with.

There are three other points wherein the recommendations of the Committee differ from the White Paper. These relate to the States. The first is in regard to federal finance. Here the declaration made by Sir Akbar Hydari on behalf of the Indian States Delegation is accepted as being reasonable. That is a point which the Indian States will appreciate as on the question of federal finance the anxiety which the State representatives felt was deep and widespread. The second important point is the grant of weightage to the States if a substantial number of States do not enter Federation so that the acceding States may not feel that they have not the share in federal politics to which they are entitled. This was also an important demand put forward on behalf of the States and is a matter of satisfaction, that it has been definitely accepted. A third point to which the Indian States attached great emphasis was the equality of powers of both the Houses of the Federal Legislature. This also is provided for, the Committee holding

“We think that the Upper House should have wider powers in relations to finance and that it should be able, not only to secure that a rejected grant is reconsidered at a joint session of the two Houses but also to refuse its assent to any Bill, clause or grant which has been accepted by the Lower House.”

It may be said generally, in regard to the States, that the Joint Parliamentary Committee's Report, meets their reasonable points of view in a much more satisfactory manner than the White Paper.

In a short preliminary survey such as is attempted here, it is impossible to touch on many questions of importance like the proposals for the recruitment of the security services and the safeguards in their interest, the Indianisation of the Army and the question of the Governor-General's advisers in the reserved subjects, and the jurisdiction of the Federal Court. The Committee generally adhere to the proposals of the White Paper in these matters though minor modifications are suggested with a view to define the position better.

On a number of important issues the Report makes the position vaguely indicated in the White Paper much clearer and in certain senses more satisfactory. The Committee accept the view that there should be no avoidable delay between the establishment of Provincial Autonomy and the inauguration of the Federal Constitution. The most unsatisfactory part of the White Paper to my mind was the vague and indefinite manner in which this question was dealt with. While the White Paper accepted the suggestion put forward by Sir Tej Bahadur Sapru that Federation and Provincial Autonomy should be provided for in the same Act, it left undefined the question of the interval between the two. In fact it made so many conditions and spoke so vaguely of the time that should elapse between the provincial and central changes that Indian opinion very legitimately concluded that while Provincial Autonomy would be immediate, Federation will take a long time to come. The Joint Committee's Report is much more specific and the Committee hold unequivocally that between the establishment of Provincial Autonomy and the creation of the Central Government “the interval should not be longer than is necessitated by administrative considerations” (Para 407).

Again on the question of the arrangements for the period of interval, the proposals of the Committee are much more specific and satisfactory. The White Paper, while recognising that the inauguration of Provincial Autonomy would involve changes in the Central Government, left out of consideration the question of the structure and powers of the present Executive Council and the Central Legislature, under the White Paper Proposals, during the transitory period, the Governor-General became the sole authority (no doubt helped by advisers) but the present legal position of the Governor-General in Council and of the Assembly was ignored. The Joint Committee's Report recognizes that even before the Federal Constitution comes into existence, the functions, if not the structure of the Central Government vis á vis the provinces would have to approximate to those contemplated under the Federation.

A third point on which the Report is a definite improvement on the White Paper is in regard to the Federal Court. It was not clear from the provisions of the White Paper whether the Federal Court had jurisdiction only in the interpretation of the constitution act and in issues between the units of the Federation, or whether there could be appeals to the Federal Court in matters arising out of federal laws. That point as well as the procedure regarding appeals from State courts or matters within the jurisdiction of the Federal Court has been very clearly laid down in the Report.

From what has been said above, it will be clear that the Joint Committee Report is in no way a reactionary document, that it follows closely the proposals of the White Paper and that where it differs, it is not with a view to restrict the authority of the Federation or of the provinces, but with a view to clarify and define what was left nebulous and undefined in the White Paper. The constitution which it seeks to establish is open to objections from many points of view, especially from the point of view of democratic theory and from the point of view of Indian Nationalism, but before serious opinion in India decides to reject the proposals it is well to remember three determining factors which in the turmoil of political controversy we are inclined to overlook.

First and foremost, this constitution embodies the realisation of the age-long and never fulfilled ideal of a United India; an ideal which the Moghuls envisaged but never achieved and the Mahrattas never attempted to envisage or to achieve. With the establishment of this constitution with all its weakness we shall be able to say that from today India from Cape Comorin to Kashmir, from Peshawar to Assam, is a single political entity: that in spite of our diversity of cultures, races and political units, we have through our national spirit established a Government whose authority is a reflection of our fundamental unity.

Secondly, it is necessary to emphasize, that this constitution is mainly the outcome of the labours of our own statesmen and represents the maximum agreement that we were able to reach. It is useless to blame others, when through the inherent difficulties of our own position, we were unable to agree on anything substantially different.

Thirdly, no one can deny that the proposals contained in the Report mean a very large advance on the present position—no doubt much less than what we desire and what we think we are entitled to. It is but questionable wisdom which would advise the rejection of something which satisfies our demands at least partially and enables us to govern the great provinces of India and to build up a sense of reality in our conception of a great and united Motherland.

Nothing is easier than to destroy a constitution by the shot and shell of logic, but let us at least at this critical time remember that political development even at best is based on compromise and political evolution is dependent on human factors.

December 1934.

While in England the J. P. C. Report won general approval, largely because "it represented a fine piece of national, and not of party, work," in India it was severely attacked, particularly in view of the safeguards, as a reactionary document. The Liberals considered it "unacceptable" and the Congressmen raised the cry of "rejection."

THE CONSTITUTIONAL SCHEME

ITS RETROSPECT AND PROSPECT

By THE RT. HON. SIR TEJ BAHADUR SAPRU

I

The reception which the Joint Parliamentary Committee's Report has had in England is in marked contrast to that which it has had in India. In England, as the result of the recent meeting at which an official resolution was moved shows it has been supported by a very large majority of the Conservatives. It is not difficult to interpret the significance of this vote. It means the triumph of Mr. Baldwin, it foreshadows the victory of the Government, unless a special conference of the Conservatives reverses the decision, over those who accept the leadership of Mr. Churchill. It would, however, be idle to suppose that Mr. Churchill or that group of Conservatives who accept his lead and who have carried on a vigorous and persistent propaganda against the White Paper, will easily reconcile themselves to the proposals of the Government or will not do the best or the worst they can to water down the official proposals. The position in the House of Lords also will not be free from difficulty. There we may take it that Lord Salisbury who commands immense influence with the landed aristocracy of England, will lead the Opposition. No doubt, Government will be supported by men like Lord Derby who is no less influential than Lord Salisbury. It will also have the advantage of the support of three ex-Viceroy's who are members of that chamber. There will be Lord Reading who has throughout his work at the Round Table Conference and at the Joint Parliamentary Committee tried to conform to the old Liberal tradition, willing to support it. It has been announced that Lord Halifax who is a member of the Government and whose sympathy with India may be taken for granted will in all probability sponsor it. At one time it was very doubtful whether Lord Hardinge would throw his weight on the side of the Government. He is now among the supporters

of the Government. Of course Lord Hailsham as a member of the Government is also bound to support the Bill and as a good Conservative he will carry weight. Nevertheless no one can feel sure what exactly the result may be in the Lords. It may be hoped that if the majority of the Commons endorse the policy of the Government, which, judging from the result of the recent debate in the House of Commons seems almost certain, the Lords will not be indiscreet enough to reject the Bill and thus give rise to a first class issue affecting the solidarity of the Conservative Party. It may be taken for granted that both in the Commons and in the Lords every attempt will be made by the opponents of the policy of the Government to wreck the Bill so far as it relates to the Centre which they look upon as the citadel of British power, and it is with regard to the centre mainly that they can raise the cry of abdication. They will no doubt rehabilitate their reputation as reformers by agreeing to responsibility in the Provinces, though there, too, one may expect some opposition to the transfer of law and order and judiciary. They will presumably refer to the recommendations of the Simon Commission in support of their position. Meanwhile, the fact remains that Sir John Simon has spoken and blessed the provisions in the Report in regard to the Centre and explained that when he wrote his Report he had made no investigation into the problem of Indian States in their relation to British India and had no reasons to believe that the Princes were prepared to come into the Federation. On the whole, perhaps, there is not much risk in saying that the Government find their position comparatively easier and safer and we may hope that the Bill which will be based on this Report may be placed on the Statute Book some time in the autumn of 1935. If it is passed into law, even then its opponents may obstruct further progress; and oppose the address to the Crown when the time comes for altering the structure of the Centre, as the committee have not agreed to the Indian proposal that a time limit should be fixed, upon the expiry of which the Federation might be set up as was done in the Dominions, with power reserved for extending, if necessary, the time.

If that is the position in England it is very different in India. And yet the Indian position may be easily misunderstood and misappreciated in England. There is no doubt that the vast majority of politically-minded Indians have received the Report unfavourably; indeed, one may use stronger language and say that Indian opinion has been unsparing in its disapproval of the Report and in its expression of disappointment. So far as the advanced section of Indian politicians represented by the Congress is concerned, it had already committed itself to the rejection of the White Paper before the recent elections to the Assembly. Consistently with that position it could not be expected that it would welcome or approve or accept the Report which in certain respects tightens the safeguards, leaves the question of Reservations, the Army and Foreign Policy, in a more or less nebulous condition and carefully avoids all reference to Dominion Status. Whether the Congress will be able to carry its resolution in the Legislative Assembly is not free from doubt. It may or it may

not. If it does, the position will not, in my opinion, be worse than it is at present. If it does not, it will still be open to it to say that the Assembly as a whole is not representative of the opinion of the country. As regards other political parties it is true that some Muslim leaders have denounced the Report but many others have not spoken and I gravely doubt whether the Muslim community as a whole will be prepared to reject the Report or the Bill that may be based on it. So far as the Liberals—if they can be called a party—are concerned, there are varying shades of opinion among them. One school of Liberals has been raising the cry that we are much better off under the existing system and that they will not go into mourning if the Bill is dropped or wrecked. I should be surprised if this section really represented the point of view of the vast majority of Indian Liberals. Another section of them has severely criticised the safeguards both in the Provinces and the Centre, expressed its disappointment at all omission of reference to Dominion Status, has pressed for changes and alterations but has not endorsed the cry of rejection.

The conservative element in India, disorganised and self-centred as it is, apparently feels the extent of the change. Many of the Indian Conservatives are not happy over the enlargement of the franchise as it is likely to affect their sheltered position. They have obviously not condemned the scheme, though they have hitherto refrained from commending it either. That seems to me to be, roughly speaking, the position in India.

What exactly the rejection of the scheme means it is difficult to understand. If it means that the scheme has failed to give us what we thought was our due and that therefore it has caused general disappointment, then no fault need be found with the use of the word "rejection". If it means anything more than that, for instance, if it is intended to imply by it that the advanced section of politicians in India will not be prepared to seek election or to accept responsibility or office under the new Constitution, then I doubt very much whether there is any substance in that cry. A very distinguished leader of the Congress, in the course of an address delivered at Patna, is reported to have spoken as follows :—

"They were asked, if the Congress was going to boycott the proposed constitution. That was a hypothetical question which could not be answered 12 months in advance of the inauguration of the new scheme of things. The Congress was, however, resolved that they would not permit mischief-makers to work mischief and commit wrongs in the name of the people through the legislatures. Whether the Congress worked the reforms or not, this much was certain that they would not allow men of that type to flourish in the legislatures. Whether the new legislatures should not completely be boycotted by the Congress would depend upon the situation and the atmosphere existing at the time of the inauguration of the new reforms."

It would thus not be ungenerous to hold that simultaneously with the cry of rejection, the Congress did not commit itself to the

boycott of the Constitution or to a refusal to accept office. Like all political parties which think that those who do not belong to them are mischief-makers the Congress is within its rights in saying that it will not allow men of a certain type to flourish in the legislatures. This does not, however, exactly fit in with the idea of rejection. As one great British statesman said on one occasion no politician can afford to look more than a week ahead. There is wisdom in it and nobody can seriously blame the Congress, if it does not affirmatively say that it is going to work the Reforms which may be placed on the Statute Book, not a week hence but twelve months hence.

It is possible for Mr. Winston Churchill and others of his school to say in Parliament that if no one wants the scheme, that is a good reason for not forcing it on India. The scheme relating to the Provinces and the Centre as it has been conceived is however a single whole and even Sir Austen Chamberlain has now come to recognise, that to create 11 or 12 autonomous Provinces without altering the character of the Centre, would not be free from danger. If Mr. Churchill should raise this criticism it would be interesting to know what alternative he would have to offer. He must then perforce agree with that section of Indian politicians who now hold that they are better off under the existing constitution, after they and the Government and so many commissions and committees have condemned Dyarchy in the Provinces.

As I have said above, it looks as if the scheme is going to be enacted some time in 1935. It will not be true to say that in the present state of feeling in India it has aroused any enthusiasm or that it is going to be received as if it amounts to a final settlement of the Indian question. Meanwhile English supporters may well feel that there are the minorities and many others who will not reject it, but work it, even if others boycott it or cold-shoulder it!

I do not propose to go into the minute details of the safeguards or the reservations. I have already expressed myself on the question of the safeguards before and after the publication of the Report. If time permits, I may write again on the publication of the bill for then we shall have the concrete proposals in legal shape. There are however certain aspects of the scheme and predisposing factors to which I should like, in particular, to invite attention.

II

The essential idea which emerged from the first Round Table Conference was that the constitution of India should be of a federal character, that the Federation to be established should comprise not only British India but also the Indian States, that, side by side with the Federation, the Provinces should become autonomous and freed from the leading strings of the centre, that during the period of transition—a period of transition was contemplated from the very start—there would be certain safeguards and certain reservations. British opinion, even at the time of the Labour Government, was not prepared to entertain any proposition with regard to Central

Responsibility. The position, however, was changed when the Princes expressed their willingness to come into the Federation. It then ceased in the eyes of British statesmen to be a far-off distant ideal and assumed the shape of a practical proposition, the implications and the limits of which had to be examined. These limits and implications were examined at length at the sittings of the Federal Structure Committee who did not find it to be an impracticable scheme but considered it to be quite worthy of acceptance, subject, no doubt, to further examination. British opinion was very much influenced by the fact that the Princes' association with the Federation would furnish to the Government at the Centre a stabilising element. That, it must be remembered, was the opinion of the official representatives of British Labour and Liberals. The Conservatives' attitude was critical but not hostile. It would, however, be wrong to assume that that was the only reason why British opinion favoured such a comprehensive Federation. The more one examined the question of Responsibility at the Centre and the frame-work of the Central Government, the more one realised that there were so many points of contact and also of conflict between British India and Indian States, that it would be impossible to provide a workable constitution for British India and leave the Indian States alone. Defence, Railways, Customs, Post and Telegraph, Currency and Exchange, were, to mention only a few, subjects of common interest. With the Indian States left out of the scheme, the writ of the Federal Government would not run through Indian States and at every stage either British India would have to put up with opposition on the part of the Indian States or at least with want of co-operation or would have to seek the good offices of the Viceroy as the representative of the Paramount Power to secure some measure of co-operation on the part of the Indian States. The risks involved in such a course should not be difficult to imagine particularly when it is a fact that Indian States were not, and are not, prepared to occupy a position of subordination in relation to a Central Government based on popular franchise. It was precisely this feature of Federation which provoked criticism in certain Indian quarters. They held that the advent of the Princes into the Federation would be a source of weakness to the popular Government as their representatives would not be the representatives of the people but the nominees of their rulers and would thus be amenable to the hidden influence of the bureaucracy, in other words, of the Political Department. That was the position at the end of the first Round Table Conference.

Upon the return of the delegates to India the position rapidly changed. Mahatma Gandhi was released from the jail while yet they were on the high seas. Then followed the long course of negotiations which ended at Delhi with what has come to be known as the Irwin-Gandhi Pact. It is important to bear in mind some provisions of that Pact.

“CLAUSE 2—As regards constitutional questions, the scope of future decision is stated, with the assent of His Majesty's Government, to be with the objective of considering further the scheme

for the constitutional Government of India discussed at the Round Table Conference. Of the scheme there outlined, Federation is an essential part: so also are Indian responsibility and reservations or safeguards in the interests of India, for such matters as, for instance, defence; external affairs; the position of minorities; the financial credit of India; and the discharge of obligations.

“In pursuance of the statement made by the Prime Minister in his announcement of January 19, 1931, steps will be taken for the participation of the representatives of the Congress in the further discussions that are to take place on the scheme of constitutional reform.”

It is enough to say that the slate on which the decisions to be arrived at were to be written was not a clean slate. The main idea, therefore, of an All-India Federation with responsibility at the Centre except in regard to Army and Foreign Policy, and in the Provinces subject to certain safeguards in the interests of India was accepted for the time being by the Mahatma as the basis for future discussions. I may pass over the intervening months between March and September or October when Mahatma Gandhi and Pandit Malaviya went to England to attend the second Round Table Conference. Those intervening months were months during which there were mutual bickerings between Government and the Congress in regard to the working of the pact just referred to. Still the whole idea of a settlement in London on the lines indicated in the pact held the field and persuaded Mahatma Gandhi to go to England.

At the time of the first Round Table Conference the representative character of the men who attended it was very strongly challenged in India. They were condemned as nominees of Government, as men, who, to use a well-worn political phrase, could deliver no goods. Their failure to achieve the settlement of the communal question at the first Round Table Conference which, as a matter of fact, was within an ace of achievement, was ascribed to their want of influence or to their blurred vision of nationalism. When Mahatma Gandhi arrived in London, he received considerable attention, though the atmosphere had been darkened by certain prejudices before his arrival. I remember how even the British Conservatives admired the speech he delivered in which he suggested his own scheme of indirect election, much to the surprise of others who differed from him. He did the very best that he could to arrive at a settlement between the Hindus and the Muhammadans. I have no doubt, that his intentions were of the purest. I did not, however, see eye to eye with him on the question of the method of the representation of the Depressed Classes, that is to say, it was in my opinion most unfortunate that while intending most sincerely to protect the interests of the Depressed Classes from his own point of view, he should have given rise to the impression that he was opposed to their demands. Nor were some of the terms that he offered to the Muslim representatives calculated to win over their support. He called a meeting of about 27 or 28

people which met from night to night at St. James Palace. Throughout those proceedings however he was most anxious to effect a settlement. I should be treading upon delicate ground if I were to refer to the attitude of some of those who participated in those proceedings. The true and full history of those proceedings has yet to be written, but I have no hesitation in saying that on the last night on which the meeting broke up I could see mental anguish in his face. We rose without achieving anything, thus reminding one of what Firdausi, the great Persian poet, has said of a famous occasion in Persian history: "They sat, they talked, and they rose." Although I was not a member of the Minorities Committee and did not want to attend it even as a spectator, I attended it under great pressure from both British and Indian sides and heard the speeches of the Hindus and the Muhammadans and also of the Prime Minister. I recorded a very brief impression then and there in my little diary which I carried in my pocket. It might be that it was tinged by a certain degree of emotion. But after nearly four years and after what I have continuously witnessed during the last four years, I have no reason to believe that I was really overborne by any ungenerous emotion at that time. The entry is as follows :—

Witnessed the funeral of so-called
Indian Nationalism, chief pall-bearers
being——. When will it be re-born?

I have referred to this incident as it is my profound conviction that our failure on that occasion has dogged our steps right through.

The Conservatives were not by that time firm in the saddle. They had yet to realise their strength. The Prime Minister who had won the election for the National Government had yet all the glamour attaching to his position. Things might have been, and I honestly believe, would have been, different by now if we had achieved success on that occasion. To the average Englishman it is of no consequence whether the Hindus are to blame or the Muhammadans. He can seize upon the fact that they quarrelled and quarrelled on a supreme occasion and were not able to compose their differences. The rest of the Conference was a long drawn-out struggle between those who wanted Responsibility at the Centre and those who did not. And if the second Round Table Conference was able to endorse some of the main features of the conclusions arrived at at the first Round Table Conference, then as one who participated in that conference and also saw a good deal from behind the scenes I can say that it was not due to our sagacity or our willingness to accommodate each other but to the influence mainly of the Prime Minister. Then followed the attempt in certain quarters to get the Prime Minister to give an award. Here again I feel that while many of us have been discussing hair-splitting distinctions between "award" and "decision" between "Mr. Ramsay MacDonald" and "the Prime Minister of England," between "His Majesty's Government" and the "Prime Minister," the country has yet to know all the facts and to capture the atmosphere surrounding the

Indian delegates there, the men who could deliver goods and the men who could not. What has followed on this award, is before the country. It is a matter of controversy between the partisans of one view and the partisans of another, but there seems to me no prospect of that controversy coming to an end at any early date. Meanwhile, the fact remains that our failure in this respect is writ large on the pages of the Report and if the safeguards, some of them no doubt bad, are there, well, they are there as much due to our want of faith in ourselves which prevented us from trusting each other on that occasion as to the want of faith of the British in our capacity to govern ourselves.

III

The subsequent stages of the work need only briefly be referred to. While yet Mahatma Gandhi was in England, clouds began to gather on the Indian sky and we heard in England of the coming storm. Here again, like all political controversies it must continue to be a matter of controversy as to who fired the first shot. In a matter of this character where feelings are roused on both sides it is not likely that controversialists will come to an agreed conclusion in their day. For an impartial judgment on these matters we must trust to the verdict of the future historian. Meanwhile, the facts must be noticed. Mahatma Gandhi returned and was lodged in jail. So were thousands of others. New slogans and new cries and new methods of agitation were met by new weapons. Ordinance followed ordinance. The atmosphere became tense. Feelings rose to a high pitch. Judgment was blurred. All this had its reaction on the progress of efforts for evolving the constitution. Government had to justify itself to its followers in Parliament. It could not very well afford to be accused of the charge that it had ceased to govern. 'Friends' who stood by the Government—and I am using the very word mentioned to me by one of the highest at that time—could not be discouraged. Their support was an invaluable asset. Meanwhile, advanced political sections in India refused to hear of the Round Table Conference or of its efforts. Those who worked under those circumstances at the Conference, who went to England, found their task still more difficult than at any other time. The country was not prepared to have faith in the London conferences. On the other hand British opinion had meanwhile hardened. Apart from those old arguments about our mutual differences, about our incapacity, about our want of political experience, about the interests of the masses, about the danger to law and order, there were fresh arguments then available to British politicians at that time. I heard not a few of them say that unrestricted and unchained democracy in India would mean chaos like that in China, or worse. It would mean that we would be engulfed by the rising tide of the new philosophy of life, the birthplace of which is in Moscow. That was the situation at the time of the third Round Table Conference. By then Conservative opinion had become infinitely stronger and was of a much more decisive character than the opinion of the small

group of Liberals or Labour men at the Conference. Mr. Winston Churchill and his stalwarts were on the war-path. They were supported by certain retired officers from India, though in fairness it must be admitted that some very influential and distinguished retired officers raised their voices in our favour too. It was in such circumstances that the proceedings of the third Round Table Conference took place. Then followed the White Paper in March 1933. It was a carefully drafted document which sought to put in concrete shape the proposals of the Government but it was certainly not a document which could strike the imagination of the people in India and naturally it was subjected to very severe criticism both for what it said and for what it did not. In its main features it adhered to the outlines of the constitution as laid down at the time of the three conferences. There were provisions for an All-India Federation, for Responsibility at the Centre, for reservations and for the special responsibilities of the Governor-General and the Governor. As in the case of the J. P. C. Report which succeeded it, so in its case, Indian opinion was more concerned with the limitations of the scheme rather than with its range. On the other hand, English opinion concerned itself more with its range than with its limitations. That it did not provide for immediate Dominion Status need surprise no one. Indeed, when one remembers the declaration of the Prime Minister at the first Round Table Conference which was endorsed in India in the Irwin-Gandhi Pact, one cannot fairly criticise the White Paper or its successor, the Report of the Select Committee, on the ground that neither of them seeks to establish Dominion Status in our day. But Indian opinion did not fail to take stock of the fact then, as it has not failed to do now when the Report of the Select Committee is before us, that British statesmanship had been discreetly silent about Dominion Status as the objective of the scheme. On the one hand we have the fact that there are certain statesmen in England not unfriendly to us who cannot visualise India, with its mixed population, and with a third of it belonging to the Princes, acquiring the status or the powers of a Dominion. On the other, there are those in India who frankly say that Dominion Status is not their objective, that they are aiming at "independence," which sometimes they translate into a free and willing partnership with England, while there are others who strongly believe that Dominion Status is and should be their objective—an objective not to be achieved in an undefined and distant future but within a reasonable period of time as the logical and inevitable sequence of any scheme that may be devised now. Personally I think that a recent Statute of Parliament—I refer to the Statute of Westminster—which has been interpreted differently by different constitutional lawyers in England and the Dominions has to a certain extent queered the pitch for us and enabled people in England to say that once India becomes a Dominion within the meaning of the Statute of Westminster, there will be nothing to prevent those who talk today of independence from making good their threat. This formal legalistic frame of mind can, I fear, only lead to barren results: fear, distrust, and suspicion on the part both of Englishmen and Indians.

IV

It was in the beginning of May 1933 that I reached London to take part in the proceedings of the Joint Parliamentary Committee. It was a committee in some ways much more remarkable than any other that I had hitherto attended. The willingness of certain members to understand the Indian problem, the marked sympathy of some, the knowledge of several and the ignorance of many, the inability of others to visualise the India of 1933 as at all different from what she was 15 years ago, led one to imagine that there were sharp cleavages of opinion between one section and another, and that there were at least some among them who would not be prepared to favour responsibility at the Centre and some others who would favour it there and in the Provinces if only some of their fears could be allayed. I personally do not think that much of the evidence that was given was very informing or that it could in any material degree affect decisions on questions of policy. But while I am prepared to say this, I must make exception in two cases. There was the evidence of Sir Charles Innes than which nothing could be fairer from the Indian point of view. I knew him at close quarters as a colleague in 1921 and 1922 and notwithstanding the fact that his attitude towards the question of the separation of Burma brought him into serious collision with what might be called the anti-separationist school of thought, I looked upon him as very friendly and fair to us. The next exception that I should make is in the case of Sir Samuel Hoare himself. I believe I was present during the major part of his evidence. His views on several questions were not identical with those of many of the Indian members. He struck throughout a note of caution. Nevertheless it is no more than due to him to say that he had mastered the subject to an amazing degree and that his exposition of the various constitutional and administrative issues was characterised by a thoroughness and precision which left little to be desired. As a sheer feat of physical and intellectual performance it was great.

I left London towards the end of July 1933. The other delegates followed in November and December. When I left I felt it was not by any means difficult to foresee the different trends of opinion in the Committee, though nobody could feel sure what the result of their private discussions might be.

I have referred to some of these details as it seems to me that in any attempt to understand or criticise the Report the background of it should not be lost sight of. The outstanding fact is that it is a Report of a Committee, representative of different schools of political thought in Parliament, the strongest among them being the Conservative. Labour had only four representatives in the Committee. As Opposition in Parliament it is ineffectual. It is more than doubtful whether at the next election it will be able to dislodge the present Government. Under the best of circumstances it cannot hope to regain anything more than its position in 1929. And lastly, although I have some very good friends among Labour members, and although

I feel assured of their sympathy, I should not make the mistake of assuming that Labour in power will be the same as Labour in Opposition. It is significant that even Labour is not prepared to concede immediate Dominion Status, and that the sort of responsibility which they recommend for the Centre is not of the British type but of the Sinhalese type. I mean no disrespect to Mr. Lansbury for whom I have great admiration but I am afraid when he and other Labour Members refer to India's right of self-determination, they mean something very good and generous—but not equally precise or definable.

V

I now come to the Report itself. From a literary point of view it is certainly one of the very best reports of recent years and the statement of the case in the first 27 pages, conceived in the most excellent temper, contains at least certain propositions with which even those who differ from the recommendations may well agree. For instance we are told that

“history has repeatedly shown the unwisdom of judging the political consciousness of a people by the standard of its least instructed class, and the creation of the British Empire, as we know it today, has been mainly due to the fact that, for the last 150 years, British policy has been guided by a more generous appreciation of the value and juster estimate of the influence, of what is sometimes called a politically-minded class.”

The first part of the sentence may readily be accepted, but as regards the generous appreciation “of the value and a juster estimate of the influence of the politically-minded class” there was a time not long ago when its influence was denied, and even today it is not universally accepted in official circles. As time passes I have no doubt that the leadership of the uneducated or less instructed classes will completely pass as it has done in many other countries into the hands of the politically-minded class. Further, it is a class which is daily growing and with the broadened franchise, it may be hoped that it will grow to very large dimensions within the near future. It is, however, no small gain that the reality of Indian political aspirations is admitted so authoritatively. Again, we are told that the new Indian constitution must contain within itself the seeds of growth. This is an unexceptionable sentiment but whether the constitution which is now foreshadowed contains such seeds is a question to which I shall refer later. It is as well that the Committee point out the difficulty of Federation composed of disparate units. They refer to the main difficulties which are two, namely (1) that the Indian States are wholly different in status and character from the provinces in British India, the former being sovereign states like the states in Australia, the latter not being sovereign at all, and (2) that they are not prepared to federate on the same terms as proposed for the provinces. This may lead to either of two opposite conclusions. (1) If they are disparate units, why unite them? (2) If they are disparate and must continue to be disparate what becomes of the

political unity of India? The Committee say, however, and in my opinion very rightly, "the unity of India on which we have laid so much stress is dangerously imperfect, so long as the Indian States have no constitutional relationship with British India." And the question for decision which they put is, whether the measure of unity which can be achieved by an All-India Federation, imperfect though it may be, is likely to confer added strength, stability and prosperity for India as a whole, that is to say, both on the States and British India. In my opinion nothing can be more dangerous than the Provinces should, in the existing circumstances, be left to themselves, to decide whether there should be any kind of federation. Analogies drawn from Canada or Australia either on constitutional grounds or on political grounds can hold good only up to a point but not beyond. There was no such thing there as Central Government such as we have in India at the present moment, and the problem of separate disparate units like the Indian States having relations with the Central Government and claiming certain economic rights against that Government did not exist there. Taking things as they are, and with different ideas of sectional character exercising their powerful influences on our minds, a pact between Provinces should be no easy task to achieve. Whether therefore the scheme for an All-India-Federation by an Act of Parliament, independently of the exercise of their contractual freedom, fulfils or does not fulfil all the requirements of constitutional theory, it seems to me that the only feasible way of achieving political and constitutional unity of all India is by dealing with the Provinces and the States and the Centre at one and the same time. Again, it is significant that the Committee recognise that they have been increasingly impressed not by the strength of the Central Government as at present constituted but by its weakness. To have an overwhelmingly large elected majority in the Assembly and to ask an irremovable executive consisting of six or seven members to deal from day-to-day with such a majority can only lead, as it has led, to the weakness of the executive on certain critical occasions. I should not call an executive strong which had perforce to depend upon the allegiance of its nominees in the legislature and in the last resort upon the special powers of the Governor-General. Such an arrangement may at times save critical situations but it does so at the cost of the moral prestige of the executive which stands bereft of all backing or support in the country.

And here, before I pass on to the application of some of these sound principles in the body of the Report, I would refer to the Preamble to the Act of 1919 which is quoted by the Committee in paragraph 12. They quote it to reinforce their argument that they have always taken stock of educated opinion in India and then they say :

"subsequent statements of policy have added nothing to the substance of this declaration as settling once and for all the attitude of the British Parliament and people towards the political aspirations of the people which we have spoken."

It is somewhat surprising that the Committee should have overlooked the whole controversy as to the meaning and scope of this Preamble. It was once authoritatively stated in the Indian Legislature that this declaration did not include a pledge of Dominion Status. That may be said to be the beginning of the present-day trouble. The most authoritative statement made in recent years on behalf of the Government was by Lord Irwin (now Lord Halifax). On his return from England in 1929 he first referred to his own Instrument of Instructions providing that

“it is His Majesty’s will and pleasure that the plan laid down by Parliament in 1919 should be the means by which British India may attain its due place among his Dominions”,

and he went on to add:

“I am authorised on behalf of His Majesty’s Government to state clearly that in their judgment it is implicit in the declaration of 1917, that the natural issue of India’s constitutional progress as there stated is the attainment of Dominion Status.”

In winding up the proceedings of the first Round Table Conference, the Prime Minister said :

“Finally, I hope, and I trust, and I pray, that by our labours together India will come to possess the only thing which she now lacks to give her the Status of a Dominion amongst the British Commonwealth of Nations—what she now lacks for that—the responsibilities and the cares, the burdens, and the difficulties, but the pride and the honour of Responsible Self-Government.”

But more important than any statements by a Prime Minister or a Viceroy is the Royal message delivered to the legislature in 1921 in the following words :—

“For years, it may be for generations, patriotic and loyal Indians have dreamt of Swaraj for their Motherland. Today you have the beginnings of Swaraj within my Empire, and widest scope and ample opportunity for progress to liberty which my other Dominions enjoy.”

It may be a good dialectical point in constitutional polemics to say (though I doubt very much if it is even that) that Parliament is not bound by these pledges, but it is very poor statesmanship to say so and to act on it. I wish to emphasise this point particularly because (1) of the attitude of certain British statesmen towards this question and (2) the silence of the Report on this point. I do not know whether this Preamble of the Act of 1919 is going to be repeated in the Bill. I can only hope that it will not be. In the first place it is hardly the sort of Preamble or statement that one would like to have consistently with the pledges referred to above. In the next place, a Preamble of this character suited to the condition of things in 1919 and to the very limited stage or responsibility then introduced in the Provinces will hardly be apposite to the scope of the

constitution now sought to be introduced, particularly when it embraces not only British India but also Indian States.

It is possible to urge that the natural development of the envisaged constitution is the attainment by India, not merely of the position but also of the powers of a Dominion. I may frankly say that I am one of those who hold that neither safeguards nor reservations can be powerful enough to effectively bar the way of India to that position. Forces will grow and public opinion will gain strength, which will make it impossible to retard for long India's progress towards that position, but while I do feel like that, I also feel that this omission on the part of the Committee may have the effect of an undesirable impediment in the way of constructive work by perpetuating a sense of distrust and struggle. What India wants at present, much more than anything else, is to settle down to constructive work to evolve schemes of her own for the amelioration of the social and economic conditions of the people. For this we must create the proper atmosphere and produce an attitude of hopefulness and confidence. Judged from this point of view, than from the point of view of individual safeguards or reservations, I cannot help feeling that the psychological effect of the Report on the Indian mind must be different from that intended by some of our friends in England.

In his recent speech in the House of Commons Sir Samuel Hoare is reported to have said as follows :—

“It was noteworthy that the Select Committee was following definitely on the lines of the creators of the British North America Act.”

It is true that there are safeguards to be found in nearly every constitution. In unwritten constitutions they are not always present to the eye. In written constitutions they do not occupy the position of prominence which they do in the Report. Apart from the difference in the nature and the character of the Canadian safeguards there is the fact that the range of the British North America Act was much larger than the limitations it provided. It is true that some of the safeguards, for instance, those relating to the minorities are to be found in the proposed constitution because the minorities wanted them and a settlement between the majority community and the minority community failed. But it cannot be denied that some have been introduced or widened to satisfy a certain class of opinion in England.

Many of them such as those relating to law and order have already been criticised by me in common with others. I shall in this article refer to just a few others. It is true that there is a convention observed by many Governments that in a secret service case, the names are not disclosed even to the Minister most immediately concerned. The Committee say that “we have no reason to suppose that Indian Ministers will not adopt the same convention” but difficulty arises not because Indian Ministers are likely to demand or disclose the names of informants or agents but because the informants

or agents would not themselves feel sure that their identity might not be revealed. Having assigned this reason they recommend that

“the Instrument of Instructions should specifically require them to give directions that no records relating to intelligence affecting terrorism should be disclosed to anyone other than such persons within the Provincial Police Force as the Inspector-General may direct or such other public officers outside the Force as the Governor may direct.”

This may be an excellent example of over-caution but it hardly leaves any room for the natural growth of any convention on the subject among the Ministers. Again, take another example of this spirit of over-caution. Say the Committee:

“Obviously the Governor as the head of the provincial executive must continue to have the unquestioned right to send for or see any officer of Government, at any time, though no doubt under the new order such personal communication between a Governor and the Secretaries would not occur without the knowledge of the Ministers concerned.”

Sir Charles Innes was confronted with a question on this point and asked how he would see the Inspector-General of Police. He did not consider it serious enough to answer it otherwise than by saying that he would probably meet him on the golf-course.

The position as to whether the Ministers are to have joint responsibility or not is not so clear. Having regard to paragraph 92 of the Report which gives the Governor the power to dismiss or replace a Minister, if it appears to the Governor that the latter was unable to administer his charge on lines which the Governor regards as consistent with the due discharge of his special responsibility it would seem that the joint responsibility of the Ministers cannot be treated as a foregone conclusion. Nevertheless, this is just one of those matters where there is room for the growth of a convention supported by strong public opinion. Perhaps this is also one of those matters on which the Instrument of Instructions may contain specific instructions to the Governors that they shall do everything to promote and foster the growth of joint responsibility among their Ministers. It is hardly necessary to point out that there are no statutory provisions for joint responsibility in the constitutions of Canada, Australia or South Africa. Joint responsibility there has arisen out of conventions and in the earlier stages of Responsible Government in those countries the Instrument of Instructions played a considerable part in the development of constitutional practice nor, generally speaking must we overlook the effect that at least in the case of Canada a great deal of the development of the constitution has taken place by a judicial interpretation particularly on the part of the Privy Council.

Whether we look to the safeguards in the Provinces or to those provided for the Centre, we are forced to the conclusion that though Responsibility is provided for, that responsibility is hemmed in by substantial limitations. In the Provinces the field of responsibility

is much larger than at the Centre. Indeed, it would be more correct to say that there are two spheres created within one of which the Ministers can act and within the other, the Governor. Roughly speaking, if the Ministers do not transgress their sphere there is no occasion for any safeguard to come into play but this pre-supposes certain qualities not only in the Ministers but also in the Governors. Both of them will have to tread their ground warily, both of them will have to exercise an extraordinary amount of patience, forbearance and good temper. That on most occasions and in many cases these qualities will be forthcoming is not by any means an extravagant hope. That in some cases they may not be forthcoming on one side or the other or on both is not a possibility to be altogether excluded and these will be the testing cases of the strength or the weakness of the constitution.

I have referred to what I consider to be one of the laudable sentiments in the Report, namely, that the Constitution must contain the seeds of growth. I notice with satisfaction that one of the main objections to the composition of the Federal Legislature has been sought to be met by the Committee. It has often been said in criticism of the composition of the Central Legislature that the nominated representatives of Indian Rulers will practically be a substitute for the present official bloc and thus be amenable to the unseen influence of the Political Department or of the Governor-General. I have carefully borne this criticism in mind but also not overlooked two facts namely (1) that a great deal of power was passing from the Central Government into the hands of the Provinces and (2) that most of the subjects in respect of which Indian States will federate are precisely the subjects on which regional differences are bound to arise among them. I have never been able to persuade myself that all the representatives of the Indian States will think alike and act alike any more than all the representatives of British India will. Still as a matter of precaution I suggested at one stage of the proceedings of the Round Table Conference that the procedure popularly known as that of the Scotch vote in the House of Commons might well be followed. In other words, my suggestion was that in legislative matters exclusively relating to British India, the representatives of the Indian States should not exercise their voting right. This suggestion did not find favour at that time or even last year when I repeated it at the Joint Parliamentary Committee, but I note with satisfaction what the Committee have to say on this subject and I hope there will be no departure from it at the time of legislation.

We have, however, one suggestion [say the Committee] which we think worth consideration. Under the Standing Orders of the House of Commons, all Bills which relate exclusively to Scotland, and have been committed to a Standing Committee are referred to a committee consisting of all the members representing the Scottish constituencies, together with not less than 10 or more than 15 other members. We think that a provision on these lines might very possibly be found useful, and that the

Constitution Act might require that any Bill on a subject included in list 3 should, if extending only to British India be referred to a committee, either of all the British India representatives or a specified number of them, to whom 2 or 3 States' representatives could, if it should be thought desirable, be added.

Without in anyway changing my opinion as to the nature and extent of the safeguards in the Provinces, but taking a long view of matters and bearing in mind the inevitable growth and development of public opinion there is, I think, room in the constitution for the growth of certain conventions which may keep in check the use of those safeguards. But these conventions require a proper soil and will never grow unless our legislatures consist of men who will recognise their responsibility to the electorates, who will attach importance to office only as an instrument of doing service to the country, and who will not easily permit any wanton or unjustified infringement of their responsibility.—I cannot conceive of any Ministers in the future legislatures of the Provinces working successfully unless they have the solid backing of close-knit parties or united groups of members. Ministers who have under the existing constitution depended upon the support or good offices of the official block will be wholly out of place under the new constitution. It is true that a legislature composed of different vested interests and elected on communal basis is not an ideal legislature for the growth of responsible Government. But, as has been pointed out in England by some statesmen, they do not envisage the Indian responsible Government to be of the Westminster model. The Westminster model has not been reproduced even in Canada. As Prof. Kennedy, a great authority on Canadian constitutional law, points out in a very recent book of his

“The French Canadians, Anglo-Saxons in Quebec and Roman Catholics in other provinces, have more or less established claims to representation in the Federal Cabinet, which has become since 1867 a reflection of provincial or territorial, religious and racial groupings. In other words, the executive Government especially placed in power in the interests of the nation as a whole is generally a balancing of interests, which calls for political legerdemain of the most skilled order. A Prime Minister may find himself forced to choose a colleague, because he is the sole supporter of his party in some province or group of provinces although his claim to the Cabinet office is merely the uniqueness of his position. He may find himself forced to select some one on account of his race or religion who brings to the Council Chamber neither executive experience nor political wisdom, neither national outlook nor the capacity for it. A Federal Cabinet may just become a strange and fortuitous Noah's Ark.”

I personally think that we must be prepared for this sort of Noah's Ark at the Centre. But *mutatis mutandis*, these remarks of

the learned professor may well apply to our provincial cabinets also, so long as there are communal electorates and so long as there are divided interests. Nevertheless, the point is that Responsible Government in Canada is not exactly of the Westminster type and the fact that it will not be of that type in India but will conform to a type which will be the product of the necessity of the situation, will not make it any the less of Responsible Government.

I do not propose to discuss at length the constitution of the Second Chambers in certain provinces. I have never held the view that they are necessary or desirable for the provinces, and I do not think that the arguments of the Select Committee are by any means convincing on this point.

I shall now briefly deal with the Centre. The first thing to note about the legislature is the method of indirect election, recommended by the Select Committee as against the very carefully considered recommendations of the Lothian Committee. Luckily these provisions do not seem to carry in them any permanence but even so the indirect electorates, apart from the fact that they disenfranchise a very large number of men who have enjoyed the franchise, will not fulfil the expectations of their sponsors. In the immediate future, they will only tend to make the Central Legislature a pale shadow of the majority in the Provincial Legislatures. Whether Lord Lothian in the House of Lords or Mr. Isaac Foot in the House of Commons will succeed in the attempt to get this recommendation reversed seems to me doubtful.

Again, at the Centre the provisions with regard to Defence and Foreign Policy and the joint deliberations between the Federal Ministers and the Crown Ministers, couched as they are in a very general language, lead one into a *cul de sac*. Whether the way out will be provided by the Instrument of Instructions it is difficult to say. The views of the Labour representatives that a time limit should be fixed on the expiry of which, defence should be handed over to popular control, if accepted, will have the merit of stimulating an uninterrupted policy of Indianisation. No one wants efficiency to suffer or the safety of the country to be imperilled but to leave the problem in such a fluid state is to shirk the real constitutional issue.

There are only two more major points to which I shall refer—* one refers to the Civil Services and the other to Commercial Discrimination. As regards the former, it is difficult to see why the power of recruitment should not have immediately been transferred to the Governor-General who will have his technical advisers on the spot and who can have a better idea of the needs of the country than the Secretary of State. It would be much easier to transfer this power in course of time from the Governor-General to the Governor-General and his Ministers than to transfer it from the Secretary of State to the Governor-General's Government. As regards commercial discrimination, there again, one must confess to a sense of disappointment. One of the special responsibilities of the Governor-General is recommended to be defined in some such terms as follows :

“The prevention of measures, legislative or administrative, which would subject British goods, imported into India from the United Kingdom, to discriminatory or penal treatment.”

The Committee are aware of the difficulty of translating this idea into exact statutory language. They say that

“this special responsibility of the Governor-General is not intended to effect the competence of his Government and of the Indian legislature to develop their own fiscal and economic policy, that they would possess complete freedom to negotiate—with the United Kingdom or other countries for the securing of mutual tariff concessions and that it will be his duty to intervene in tariff policy or in the negotiation or variation of tariff agreements only, if in his opinion the intention or the policy contemplated is to subject trade between the United Kingdom and India to restrictions conceived not in the economic interests of India but with the object of injuring the interests of the United Kingdom.”

The specific provision in regard to shipping, bounties, subsidies etc. is a logical development of this policy. “Legislative discrimination” is fairly well understood in constitutional law, but the rule as to administrative discrimination will, I fear, be a fruitful source of unpleasant controversy. In any case, a safeguard of this extent is not wholly consistent with the fiscal convention which has been in force under the existing constitution. It is easy enough to declare in general language the principle intended to provide against discrimination: it is difficult to put it in precise statutory language and still more difficult to work it without friction.

It is when one takes into consideration the provisions relating to the Centre, particularly with regard to the reservations and some of the safeguards, that one is compelled to doubt very seriously whether the Committee have been able to act upon their excellent principle namely that the constitution must contain within itself the seeds of growth. Even if some conventions are allowed to grow, those conventions cannot by any means be allowed to override the express reservations. I am not referring here to the constituent powers. I am aware that there are no such powers even in the British North America Act, but there the field was not mapped out in the manner in which it has been under the proposed constitution. Conventions could grow easily in Canada and indeed, they have grown, so much so that, to use the words of Prof. Kennedy again,

“judicial decisions, constitutional conventions, political customs, unwritten rules and regulations, have so changed and modified the British North America Act that it is doubtful if the fathers of *the* Federation would today recognise their offspring.”

I doubt very much whether this can come off to be true under the proposed constitution. This, of course, does not mean that there is no room at all for certain conventions but I am thinking of the British North America Act in this connection because that is said to have inspired the authors of the Report.

To sum up, it would be idle for anyone to pretend that the written word of the Constitution as foreshadowed in the Report, is identical with, or like, the constitution of the Dominions. Indeed, this is not what the authors of the scheme were aiming at. At the same time I feel that the inevitable consequence of this constitution, accelerated by those political, economic and social forces which are bound to come into existence, will be to give a still greater impetus to the demand on the part of the enlarged legislatures that India shall be put on the same level as the Dominions. And this demand supported as it will be by enlarged legislatures and enlarged electorates, will be irresistible. On the other hand, while I have criticised many features of the proposed constitution, I am not prepared to endorse the view which has been put forward in certain quarters that the proposed constitution will make our position worse off than the existing one or that we should make common cause with Mr. Winston Churchill to wreck the proposed Bill.

As I have said before, it would be wrong to suggest that the Constitution foreshadowed in the Report has been received with any degree of enthusiasm or even approval in any quarter in India. To enfranchise, however, 35 million of men, to enlarge the size of the legislatures both in the Provinces and the Centre, to abolish official blocs and executive councils in the Provinces, to alter the structure of the Central Government and then to think that you can effectively prevent India from demanding the fulfilment of her aspiration in the fullest measure for any great length of time, is to take a very short view of matters. One way of looking at the proposed constitution is the formal legalistic method. Such a view, either on the part of Indians or of Englishmen, may satisfy those who are more concerned with the making up of a balance sheet of net losses and profits immediately. Another way of looking at it is by examining its vitality, not in the light of the written word of the law alone but by taking into account those forces which tend either to foster the growth of a constitution or to paralyse it. I am neither taking a pessimistic nor an optimistic view, but I feel, that irrespective of any question of rejection or acceptance, which seems to me more or less an academic question at the stage which matters have reached, the vital forces can only be furnished by ourselves even though the limitations on the written word of the law may be large.

Those vital forces must first of all concern themselves with the composition of the legislatures. If we return to the legislatures men who place their personal interests above the common interests of the country, the Ministers must come from among them. With Ministers belonging to that class will any Governor require to have or to resort to any safeguard? They will be the tools of policies which will not be evolved by them but by others. On the other hand, if the legislatures are composed of men of genuine patriotism, if they develop, as sometimes and in some provinces they have been under the existing constitution, a sense of party discipline, and are prepared to stand by their Ministers, very few Governors will, I think, be prepared to resort light-heartedly to anyone of those

safeguards. With enlarged franchise why should we despair of sending those men in whom we have confidence? Defective as the proposed constitution is, falling short as it does of our expectations, based as it is on a system of checks and counterchecks, I am not prepared to say that it is either unworkable or that it is not likely to be worked even by those who are at present loudest in their condemnation of it. We cannot afford to live any longer upon a mere negative policy. When the Constituent Assembly which is said to be the alternative to the present constitution may come into existence, no one knows. Who will call it, on what franchise it will be called, what measure of agreement among ourselves is anticipated, and how we are going to get it accepted by British Parliament (unless we are prepared to shut our eyes to the realities of the situation and to ignore the existence of Parliament), are questions which yet await answer. Meanwhile, if the foreshadowed constitution is put on the statute book—condemn it as much as we may—it will work us, if we are not prepared to work it.

January 1935.

If at the Round Table Conference, Federation emerged as "a real live issue," with the publication of the J. P. C. Report, it became a reality. And it was taken for granted, in the words of the Times, that "no final or satisfactory solution of the Indian problem is even conceivable without the States."

STATES AND FEDERATION

By COL. SIR KAILAS HAKSAR

The recommendations of the Joint Parliamentary Committee on Indian Constitutional Reforms, so far as they bear upon British India, have formed the subject of comment by all schools of thought in that part of the country, almost from the moment of the appearance of that Report. The views of Their Highnesses the Princes and their advisers on the recommendations of this Report as they affect the States, both those States that enter Federation and those that do not (i.e., assuming that the prescribed number enter and make Federation possible) will probably be made public after the Chamber of Princes has met about the third week of January. Meanwhile, it might be of some interest for one who does not approach the problem from the point of view of the State which he serves nor attempts to give a direction to the thoughts of those serving in other States whose duty it will be to advise their masters, to examine the Report with the detachment thus made possible.

Not merely does the impression still seem to prevail in some quarters but it has actually been said on various occasions from equally various promptings that the idea of Federation was suddenly flung at the heads of the States at the first Round Table Conference. It might, therefore, be relevant to the present purpose to recall certain facts which have a direct bearing both upon this allegation and the problem which has to be discussed.

The first fact to grasp is that in so far as Federation means the unification at the top of the control of diversified and indeed divergent interests, Federation in effect, though in a very broad sense, has existed in India ever since responsibility for the government of British India was combined in the hands of a power that rose to be the Paramount Power in India and was, thereby, enabled to control the fortunes of the States in every matter which, according to its honest belief, affected its obligations as such a power.

The second fact more directly bearing upon the consideration which the States are called upon to accord to the position emerging

from the Report of the Joint Parliamentary Committee arose out of the visit to India in 1917 of Mr. Edwin Montagu, then Secretary of State for India. Mr. Montagu, though principally concerned with enquiring into conditions to which the Morley-Minto Reforms of 1908 had given rise, invited Their Highnesses the Princes to tell him where they considered the policy applied to them by the Paramount Power to be capable of improvement and reform. The responses were catalogued, and the so-called "List of 23 Points" resulted. Of this List, it might be remarked that although in terms the complaints put forward bore upon disregard of the Treaties, those disregards, when analysed, were found in reality to have constituted inroads upon the economic interests and life of the States.

The result of the complaints made was that the policies relating to the subjects of those 23 points were gradually revised by the Government of India: the result also was that the framers of the Montagu-Chelmsford Report indicated that the best hope of the reconciliation of States and British Indian interests lay in an approach to a federal constitution.

Ten years after came the Report of the Statutory (Sir John Simon's) Commission which definitely visualised, as an ideal steadily to be kept in view, the creation of Federation in India.

But even before the publication of the Statutory Commission's Report, the Committee appointed at the request of the States and presided over by Sir Harcourt Butler, after an enquiry covering the whole field of the States' representations, had, at the conclusion of its Report, offered certain observations, undoubtedly in the hope of preparing their minds for what, in the Committee's belief, was bound to come, it might be added, sooner rather than later. The Committee said :—

"...While impressed with the need for great caution in dealing with a body so heterogeneous as the Indian Princes, so conservative, so sensitive, so tenacious of internal sovereignty, we confess that our imagination is powerfully affected by the stirrings of new life and new hopes in the States, by the progress already achieved and by the possibilities of the future. To that future we can merely open a vista. Our terms of reference do not invite us to survey the distant hills and the valleys that lead to them. But we are confident that the Princes, who in war and peace have already rendered such signal service, will play a worthy and illustrious part in the development of India and the Empire."

Thus, for those who were able at the inauguration of the Round Table Conference, to bring the happenings of the last 12 years and more into focus, the proposal that the States and Provinces should federate for certain limited purposes and without impairing the measure of sovereignty still enjoyed by the States, had no element of surprise in it.

Since the first Round Table Conference was held in 1930 the position that such States as have expressed themselves at all on the

question of Federation, have taken up, may be expressed in general terms as follows :—

“We shall enter Federation provided our sovereignty and our Treaty rights are safeguarded.”

To achieve such security of their rights and position, the safeguards desired were enumerated by the States. These multiple safeguards, on analysis, would be found to be numerically fewer than their statement made them out to be.

But, apart from this, for our present purposes it would be far more useful to examine the recommendations of the Joint Parliamentary Committee with a view to seeing how far the position of the States, as part-sovereigns, and in treaty relations with the British Government, is in actual fact safeguarded.

All States are not Treaty States. Some have Sanads and Engagements, the latter of which in some instances have been specifically acknowledged to possess the force of Treaties. And yet neither all Treaties nor all Engagements and Sanads provide that the British Government would protect individual States “against external aggression and internal commotion.” Nevertheless, the British Government, as the Paramount Power, has assumed this responsibility and discharged it. There is no case on record, since the establishment of British Paramountcy, in which a State disappeared, i.e., was wiped out of existence as the result of aggression from a neighbour or of the emergence of conditions within the State that might have led to its dismemberment, as distinguished from the downfall of the ruling dynasty.

The Federal Scheme, by the reservation of Defence (page 97, paragraph 174), provides for the continuity of the present policy of the British Government and, assuming that a time comes when even Defence and Foreign Affairs are transferred to an indigenous Government of India fully responsible to the electorate of the country, the States would have the right to insist that such a Government should assume the responsibility owned and discharged by the Federal Government and, indeed, it may be taken for granted that the British Government will see to it that this comes to pass.

It seems an implicit irony of the situation that certain provisions of the Joint Parliamentary Committee’s Report which have been most strongly attacked by British Indian politicians and almost treated as a betrayal of trust reposed in the elder statesmen of the United Kingdom, actually provide more effective safeguards of the right and interests of the States than any provisions for the specific incorporation of which in the coming Act their imaginative caution or intuitive prudence had led them to ask. We might take, for example, the special responsibility of the Governors defined in paragraphs 80 and 155 of the Report and, still more, the Viceroy’s special responsibility in general and in direct relation to the States as recommended in paragraphs 158, 168 and 174.

In addition to this, it is clear (page 87) that an effort has been made by the framers of the Report to preserve certain rights of the

States which have survived the evolution of the British policy in India, such as Postal Conventions and Local Currencies and Coinage and this is also evidenced by the substantial measure of liberty reserved to individual States in accepting selectively the list of Federal subjects. The States are not expected to adopt a standard form of the Treaty of Accession. They are given liberty to introduce qualifications into that Treaty, subject, of course, to the condition that these qualifications are necessitated by vital rights and are not so numerous as to encroach too far upon the federal field.

The advent of Federation is dependent upon the voluntary entry of States which rule over half of the total population of the States and which would be entitled under the Scheme of distribution of seats to half the total number of the seats allotted to them.

In addition—and this is an even more important qualification and indeed a more comforting pre-requisite—Federation will be inaugurated only when the financial and economic conditions, now in a state of doubtful equilibrium are demonstrably stabilised.

In Federation, the rights, authority, and jurisdiction possessed by the Crown including the rights of Paramountcy to-day exercised by the Governor-General in Council, will be exercised by the Viceroy; the Governor-General and the Federal Government will not exercise those rights; and all non-federal matters, i.e., those which any State either under the general formula or under its Treaty of Accession might be permitted to treat as non-federal, will be within the purview of the Viceroy's authority. Indeed, the Viceroy's special responsibility will enable him to protect the States in all matters, including federal matters, whenever he is persuaded that the right of a State or States must be preserved in the exercise of his special responsibility. The separation of the Viceroy from the Governor-General (page 88 paragraph 158) ensures to the States a greater degree of the protection desired by them than the Viceroy can extend to-day when, under the present constitution, he is fettered and hampered, if no more, by the existence of the Executive Council.

The Federal Executive will be, "in some measure" responsible to the Federal Legislature, but the responsibility "will not extend to all federal subjects" (page 91 paragraph 163). In addition, one of the statutory responsibilities of the Governor-General himself will be "the protection of the rights of *any* Indian State" (page 94 paragraph 168). The force of the word "any" is apt to be overlooked. It is at once a vital and a comprehensive word. Its implication seems to be that any State may satisfy the Viceroy that its rights are in danger of being adversely affected, and he would have to extend to it the necessary protection. Thus, every State, if any of its rights is in danger, will be at liberty to approach the Governor-General (perhaps through the Viceroy) for protection and so long as it can make out a case for such treatment, it will receive it. It will, therefore, depend upon the States what measure of protection they can extract out of the proposed constitution. On the basis of the constitution—and this is the point that needs making—there is here alone a safe-

guard more extensive than anything implied in the special declaration of the Chamber of Princes or in the "essential or important conditions" formulated by them to be satisfied by the constitution. It is, therefore, very much a matter of careful analysis of what is implicit in the proposed constitution, before it can be said that the rights of the States have not been sufficiently safeguarded.

A further point which illustrates the anxiety and willingness of the framers of the Report to meet the wishes of the States, is the clear provision in paragraph 209 of the Report that, the scheme for the distribution of seats notwithstanding, if the States that join barely number those that enable Federation to come in, the remaining seats will be filled up by the representatives of acceding States so that the voice of the States will have its due weight even when they are not there in their authorised strength.

No invasion of the internal autonomy of the States is contemplated by the recommendations of the Joint Parliamentary Committee (paragraph 219, page 120), in so far as it is provided that the execution of Federal laws in the States will be by their own agency and not by that of the Federal Government. This ensures to them their administrative or executive autonomy.

As regards their legislative autonomy, and examination of the Central, Provincial and connected Lists shows that even in Central matters, the States may exempt certain subjects, by provision in their Treaties of Accession, from Federal legislation. Having regard to special, important interests, this in the case of individual States might cover Shipping and Port legislation, or legislation bearing upon Posts, Opium, particular industries, and various excises.

It might have been apprehended that legislation in the Provinces might adversely affect the States. But it is obvious that the Provincial List leaves the States their present field of legislation, while their prestige is safeguarded by the liberty they have to legislate concurrently in Central matters.

Though Railway Police is retained by the Federal Government, the position of the States that have their own Railway Police and exercise jurisdiction on their own lines, will not be altered. The present position is that in spite of the retention by certain States of Railway jurisdiction and their own Railway Police, the Governor-General in Council may, by legislation, not to say diplomatic pressure, secure from the States any object he desires to carry. Thus, in effect, the position of the States would be improved: so also there will be considerable room for improvement in the field of extradition.

Fundamental rights of the citizens to the inclusion of which in the Federal Act the States were opposed, find no place in the recommendations of the Joint Parliamentary Committee, although it is provided in paragraph 267, inferentially for all constituent units of the Federation, that "colour, caste, and religion, etc. will not disable a person from holding public office." It may be presumed that this is a permissive and not a compulsory provision.

At present the States are helpless against the inroads of mischievous persons in British India. Under the reform scheme, it would be possible for the States to strengthen their position considerably in the matter of inter-Provincial migration.

As this is professedly a detached examination of the proposals of the Joint Parliamentary Committee, the other side of the shield must also be exhibited.

The first thing that strikes the writer as incompatible is that States should be allowed to nominate their representatives to the Upper Chamber to the extent of the seats allotted to them individually and yet it should be provided (page 113, paragraph 204) that once so nominated, a representative must stay there for three, six, or nine years.

It is necessary, too, to scrutinise the position in regard to Federal Finance.

The Federation is supposed to come into being only when the financial and economic conditions have been stabilised. When such stability is attained, it would merely amount to India's, or more precisely the Central Federal Government's ability to just balance income and expenditure, with no possibility of any reserves against "war or acute frontier trouble."

Now, in all countries where public finance is determined by accepted principles and based upon the consideration that the people of a State should be taxed at a minimum consistent with the carrying on of a progressive administration, the expenditure entailed by war is obtained by emergency taxation or by borrowing against the credit of the country. The absence of any reserve against war, under the Federal Scheme, has however to be viewed from the point of view of the States. They would be joining a scheme of Government on a basis practically of common responsibility for such a state of affairs. To-day, except for voluntary contributions in the event of a menace to the solidarity of the country, they are not compulsory contributors to the provisions of funds for carrying on war. It was for this reason that they contended that in any future emergency after the inauguration of Federation, their contributions should still be voluntary. The 'provision under this head practically amounts to an acceptance of this contention, at least for a term of years. But in an honest analytical view, it must be admitted that having regard to the resources of the country in relation to the cost of Defence and Administration, a contingent liability would accrue to the States under the proposed Federal Scheme.

Then, again, in the present position when things still seem to be in a state of flux and threaten to remain in that condition for a time which not even the boldest optimist can, with any justification, precisely define, can reliance be placed upon Customs continuing to yield rupees fifty crores and more?

In regard to Corporation Tax also, the scheme provides immunity for the specified period of ten years after which the States

become responsible either to pay the tax or to contribute a lump sum equivalent to the amount that they would have to pay if they were transferring to the Federal fisc the yield of the tax upon the earnings of companies operating within their territories.

There are two trains of thought that emerge in connection with the liabilities of the States in an emergency and in connection with the Corporation Tax.

An attempt has been made in the Joint Parliamentary Committee's Report, by endorsing the recommendations of the Davidson's Committee, to equalise conditions in British India and the States, i.e., by suggesting that the present contribution of the States towards Defence, especially of those States that have ceded territories for the provision of their own defence by the British Government, will be wiped out. It is impossible to tell how long the attainment of such a parity might take but those States would, under the scheme, become immediately responsible for the liabilities referred to. Neither can it be asserted that apart from the States' own view of their dues, the award recommended by the Davidson Committee is really adequate. And, certainly, hitherto these States have doubly contributed to Defence

- (a) by their direct contribution, viz., cession of territories; and
- (b) indirectly, through sea customs.

Another point that has to be considered is that whereas there is a reference to borrowing powers (paragraph 266 of the Report) of the Central and Provincial Governments, there is no such reference to this power of the States, unless it is to be understood that the participating States would, for this purpose, rank with the Provinces and not be subject to the present-day limitations imposed upon them by private diplomatic pressure. It is necessary to allow them such power for their own development, and also safe since the borrowing power of an administration is entirely a matter of its credit, and nobody is going to lend unless assured of security.

There is a relation between this observation and the observations offered in a previous paragraph in regard to Corporation Tax. The question might be asked what sources of revenue do the States possess to-day, particularly in the shape of taxation? Are they not forced to rely principally upon a declining land-revenue (having regard to the small prospect of any great rise in agricultural commodity prices) supplemented by revenue raised from internal customs which positively cripples, and, indeed, impoverishes their subjects? It is easy to criticise the States for their want of economic vision in maintaining internal customs, but if they are to carry on their administrations and to make an approach, as progressive units of the Indian polity, towards the accepted standards of efficiency, are they not driven to the necessity of adopting a very uneconomic and indeed, a ruinous form of taxation?

Then, again, no one who examines the recommendations of the Joint Parliamentary Committee from the point of view of the States,

with an absolutely detached mind, can ignore the fact that they, by entering Federation, assume an indirect responsibility for the grant of substantial subventions to deficit British Indian Provinces, for the Debt Service of India, with which they are not at present concerned, and for Pensionary Charges, with which they have and should have, if possible, even less concern.

In regard to jurisdiction exercisable under the Federal Scheme, there is one point which to a lay reader of the Report is not quite clear and it is that there is reference to a form of jurisdiction called "Advisory." It is doubtful whether the reference in this provision is not to the States. If it is, as it seems to be, the States may well consider whether the exercise of this "Advisory" jurisdiction will not, when occasion arises, assume the form of competent jurisdiction.

The States contended and His Majesty's Government re-echoed their contention that the time for them to make up their minds as to whether they should or should not enter Federation would be when "the picture is complete."

It seems both relevant and justifiable to observe that the picture as outlined in the Joint Parliamentary Committee's Report is as complete as it could ever be except perhaps that the phraseology of the Sections in the actual Draft Bill be a little more exact because it will have to be legal. Consequently, there would appear to be little justification for delaying the decision as to entry or non-entry. Legal opinion might be obtained again after the publication of the Bill, as it has already been obtained more than once before and, perhaps, once after the publication of the Joint Parliamentary Committee's Report. The opinion of Counsel can to a very great extent be determined by the questions that are asked and by the manner of the statement of the case referred to them. It is not expected of Counsel to go beyond answering specific questions, even when Counsel might feel that if professional etiquette permitted them to go beyond the questions, they might on general considerations and indeed on the basis of constitutional principles amend the opinion they have expressed on the case presented to them.

The question, therefore, for the States to consider is really not what they stand to lose by entering Federation, but what they stand to gain by not entering and, indeed, to lose by not entering. Let everyone concerned answer this question for himself in the light of the analysis given in the foregoing paragraphs.

January 1935.

The omission to "Dominion Status" in the Government of India Bill evoked strong, even severe, criticism in political circles, and a controversy raged round the fundamentals of the Indian constitutional problem.

THE INDIA BILL AND DOMINION STATUS

By AN OBSERVER

It was perfectly natural that all omission to "Dominion Status" in the Government of India Bill, the debates on which are proceeding from day to day in the House of Commons, should have evoked strong criticism in India and also in certain circles in England. Side by side with this criticism, another line has been taken by some politicians both in England and in India, and that relates to the omission of the Preamble of the existing Government of India Act in the new Bill. In the opinion of the present writer these two lines of criticism do not cover the same ground. To take up the question of Preamble first, the Preamble itself makes no reference to Dominion Status. It only declares the policy of Parliament for the increasing association of Indians in every branch of the Indian administration and for the gradual development of self-governing institutions, with a view to the progressive realisation of responsible government in British India as an integral part of the Empire. The time and manner of each advance can be according to the Preamble determined only by the Parliament upon whom rests the responsibility for the welfare and advancement of the Indian peoples. Now, Responsible Government need not necessarily be the same thing as Dominion Status. Indeed, this is how it was interpreted several years ago in a famous speech in the Assembly by Sir Malcolm Hailey when he was the Home Member of the Government of India. He maintained that all that Parliament was pledged to was Responsible Government and that Dominion Status for India was beyond its contemplation. The subsequent history of Indian politics both inside the Assembly and outside was much influenced by this explanation. It gave rise to grave suspicions in India which were still further strengthened by the exclusion of Indians from the Simon Commission. The Simon Commission came to India and went back to report without having established any contact with recognised political parties. This does not mean that it saw no politicians. It did see some of them but it never succeeded in winning over the confidence of political parties. It made a report which was probably the "best seller" in its day. As a statement of the position in India, perhaps not much exception

could be taken to it. It neither underestimated nor exaggerated the forces of Nationalism in India. On the whole its estimate of the influence of nationalistic ideas was fair. It failed, however, in one essential feature. The Commissioners had no vision and no imagination, and although their sentiments were good, their recommendations were marked neither by courage nor by breadth of view. The utmost limit to which their constructive statesmanship permitted them to go at that time was Provincial Autonomy with the possible inclusion of an official Minister in the cabinet not necessarily in charge of Law and Order. At the Centre it adumbrated the creation of a Council for Greater India. The Commissioners whispered in accents of Federation but dared not suggest the materialisation of that idea in our day. Since then Sir John Simon has spoken on the subject on several occasions and we may accept his explanation as perfectly genuine. An investigation into the problem of Indian States was outside the terms of his reference. He had no reason to believe at that time that the Princes would be ready to join hands with British Indians in achieving a responsible Centre on the groundwork of a Federation. If he could have been assured of that, he and his colleagues would have recommended a Federation in our day.

The Report, such as it was, was a fruitful source of agitation. Meanwhile, the Congress had raised the cry—a very indistinct and feeble one at Madras—of secession or independence, but it took it another two years to definitely formulate “independence” at Lahore. Public feeling in India, however, in political circles, was growing and developing. Luckily at that time, Lord Irwin was at the helm of affairs in India. He had his finger on the pulse. He went to England and came back with a declaration in which he stated,

“I am authorised on behalf of His Majesty’s Government to state clearly that in their judgment it is implicit in the declaration of 1917 that the natural issue of India’s constitutional progress as there contemplated is the attainment of Dominion Status.”

There the matter rested for nearly two months until it was left to the Congress at Lahore to openly declare for “independence.” What followed is common knowledge—resignations from the legislatures, Civil Disobedience, Ordinances, imprisonment of thousands of Congressmen, including Mahatma Gandhi, Pandit Motilal Nehru, the Patel Brothers and others. While all this was happening Lord Irwin and His Majesty’s Government were maturing their plans about the Round Table Conference. The first Round Table Conference met, and to the surprise of the Government and everybody else, the Princes agreed, subject to the safeguarding of their sovereignty, to join the Federation on the basis of a responsible Centre and then the Prime Minister made a declaration that

“responsibility for the Government of India should be laid upon legislatures, central and provincial, with such provisions as may be necessary to guarantee, during a period of transition, the observance of certain obligations and to meet other special

circumstances and also with such guarantees as are required by minorities to protect their political rights and liberties.”

He wound up the proceedings using for the first time the expression of Dominion Status as follows :—

“Finally, I hope and I trust and I pray that by our labours together, India will come to possess the only thing which she now lacks, to give her the status of a dominion among the British Commonwealth of Nations—what she now lacks for that, the responsibilities and the cares, the burdens and the difficulties, but the pride and the honour of Responsible Self-Government.”

That declaration stands, though it may be that the White Paper and the Report of the Joint Select Committee and the Government of India Bill have carefully eschewed all reference to Dominion Status.

When the Government of India Act was passed in 1919, the Princes and their States were a long way off from its ambit. It concerned itself only with British India. Assuming that the Princes are coming in, the position is obviously going to be very different. The Princes are the allies of His Majesty, they possess varying degrees of sovereignty among themselves. Responsible Government at the Centre if established will be of a complex character in its essence. When that Responsible Government matures into the strength and status of a dominion, there will be nothing like it among the British Commonwealth of Nations. It may be very well for Parliament to claim the right to provide for the increasing association of Indians in every branch of the administration, and for the gradual development of the self-governing institutions, so long as by ‘Indians,’ Parliament means British Indians. But when British Indians and ‘Indian’ Indians come together within the purview of a common constitution, it will not be so easy for Parliament to regulate the pace or to determine the time and manner of each advance for itself. This is not a dry constitutional or logical view of the matter. This rests upon an estimate of the development of new political forces and ambitions which are bound to arise, once the political unity of India is established by a single and comprehensive constitution. It is possible to treat the Princes at present as reactionary forces, as people who are in no hurry to move on. This static view of the new conditions which will spring up under the new constitution may be comfortable to some and uncomfortable to others. But it overlooks one important factor. The Princes are deeply interested not merely in questions of defence, but also in questions of finance and trade. They cannot for long remain content any more than their British Indian countrymen can with a constitution which restricts freedom of action in those spheres in which lies the development of the economic resources of the country and its consequent moral and political strength. Howsoever autocratic they may be within their own territories the very consciousness of their being partners in a constitution which places India in a position of inequality with other members of the British Commonwealth of Nations, will goad them on as it will goad others to demand and achieve equality.

The present writer's grievance is not so much that the Preamble has been omitted because of some expert advice, the point of view of which is not so obvious to the unsophisticated mind of an ordinary layman, as that there should be some people who think that the preamble of the Government of India Act, if repeated in the new Bill, would fit in with the declaration of Lord Irwin or the declaration of the Prime Minister or the altered situation in view of the association of Princes or the new political forces which the new constitution will let loose and which it will be difficult to stem, even though the future Secretary of State may be Mr. Winston Churchill or Lord Llyod or Sir Henry Page-Croft, and not Sir Samuel Hoare. The English are not a very logical people. Their constitution itself is a glaring mosaic of illogicalities and imperfections. Nevertheless, it is true that they are a practical-minded people and their constitution which is unwritten, has worked well and shown greater elasticity and has enabled them to muddle through difficult and awkward situations. They are not, however, providing a constitution for themselves. They are dealing with a people whose mind is intensely logical and metaphysical and who are above everything else, emotional and imaginative. If they could only realise this and could feel at this juncture how lack of imagination on their part has defeated some of their best intentions in India and involved them in avoidable distrust and suspicion, they would adopt a different line. Even if the preamble is repeated, the present writer feels it will not satisfy the political mind of India and it will not be able to cope with the problems which are bound to arise in consequence of this constitution at no distant date. The problem to the mind of the writer is not whether the true legal view is that the preamble of an Act is never repealed or that it is repealed, but whether the existing preamble, if repeated in the new Bill, will meet the needs of the situation and satisfy any considerable sections of political India.

It is true that a declaration of policy, whether made by a Minister on the floor of the House of Commons or embodied in a Parliamentary Statute, is a declaration and nothing more, and a Statute of Parliament is not like the law of the Medes and Persians. It is of the essence of Parliamentary sovereignty that what Parliament has done, it may also undo. And therefore, theoretically, it is true as pointed out by the Attorney-General that a declaration made by a Minister or a preamble to a Statute embodying a policy may be repealed by that very Parliament or by another Parliament. On the other hand, the Attorney-General and other speakers in the House of Commons have laid stress, and properly so, on the well recognised constitutional practice that in matters of foreign policy or in matters of Imperial character it is not generally the custom of Parliament to break continuity. The question is at bottom not a legal or a constitutional question. It is essentially one of a psychological character. If His Majesty's Government and the vast majority of English politicians feel that the allotted destiny of India is a position of equality with the other self-governing communities within the British Commonwealth, then why hesitate to say so? The more they

emphasise difficulties of a drafting character in embodying that idea, the more they expose themselves to criticism, suspicion and distrust, and what is worse, the more they play the game of those who have raised the cry of "independence" and who make no apology for frankly confessing that they want to cut the painter. It is no use hoping that by refusing to use the proper word, they can regulate the pace or time and manner of advance according to their judgment. Lord Morley's inability to visualise a time when India would have Parliamentary institutions could not prevent the making of the declaration in 1917 or the inauguration of the Reforms in 1920. Lord Birkenhead confessed in as clear language as possible that he could not imagine India achieving Dominion Status at any time. Within less than three years of his disappearing from the India Office came the declaration of Lord Irwin, and within a year again of that declaration came the declaration of the Prime Minister referred to above. Who could have believed two or three years ago that the National Government—predominantly conservative in its composition—would allow its Attorney-General to speak as follows—

"Put the phrase 'Dominion Status' into your Preamble, as a Status which you are conferring on India, and you will have ready made for you in a few years to come a series of lawyer's wrangles as to whether it was the Dominion Status of 1935 or the Dominion Status of whatever year it might be in which the question is arising."

Mr. Churchill interrupted the Attorney-General and drew out a statement from him of first-class importance and that was as follows—

"It is Dominion Status both before and after the Statute of Westminster."

It is true that the Attorney-General emphasised the difficulty of defining Dominion Status and putting the phrase into the preamble. It is true again as he points out that Dominion Status is a thing of life, of spirit, and growing and not a dead thing, and not of the legal form. It is difficult to believe, however, that a learned and accomplished lawyer like the Attorney-General or a skilful and resourceful draftsman like Sir Maurice Gwyer to whom must belong in the main the credit of drafting this Bill, should find themselves at their wit's end, in describing in appropriate language "a thing of life, of spirit." Might it not be that the Attorney-General and his colleagues are really afraid of stating the policy lest it might force the pace of progress! For let us bear in mind what he says in a later passage in his speech :

That India should at some time enter upon the same rights as of the dominions [said the Attorney-General] I most certainly affirm, but it is obvious to all that India from her size, position and strategic position, will have more difficult problems presented to her than even those which have been presented to the Government of other dominions.

Nobody who takes a realistic value can rightly deny the difficulty of those problems to which the Attorney-General refers but how

those difficulties can be averted by omitting all reference to the phrase "Dominion Status," it is difficult to see. On the other hand, a realistic view of India need not necessarily be opposed to the acceptance of high ideals regarding her constitutional position. The trouble is that expressions like "at some time" tend to discount the merit of generous sentiments uttered by the Attorney-General and several other speakers in the debate. The progress of a nation towards freedom does not depend so much upon the words of a Statute or upon the size or the geographical position of the country it inhabits as upon the growth and development of the forces of unity and patriotism and a timely appreciation of the opportunities which come in its way. It is these which serve to act as a momentum to the speed of its progress. It is therefore to be regretted that the good intentions to which the Attorney-General gave expression should remain enshrined in the pages of the Hansard and not be clothed in proper language in the Statute of Parliament to be a steady guide and a shining beacon light to all those who may follow the present Government.

Nothing that the present writer has said above should be taken to detract from the greatness of the speech of the Attorney-General. It has at least served one useful purpose. It has wiped off many of the cobwebs that had gathered round the Statute of Westminster. A previous speaker, Mr. Emmott, quoted from a speech of Mr. Sastri, delivered on July 22, 1930, at the East Indian Association, London :—

However much [said Mr. Sastri] the meaning of Dominion Status may be changing, one aspect of it has for years been accepted not only as essential but as forming the very bond and cement of the Commonwealth, that is the right of secession. It is no use saying to us in India; well that would have one meaning to Canada and Australia and Ireland, but may have another meaning with regard to you..... What is the use speaking in one voice to them and in another to us?

Mr. Sastri is not the only person who has taken that view of Dominion Status. There are many others who have taken the same view and they are not confined to India alone. This view apparently receives some support from a misreading of the Statute of Westminster and a misapprehension of its scope. The fact that some eminent politicians have taken that view however cannot invest it with correctness and the merit of the Attorney-General's speech lies in exposing this popular fallacy. Says the Attorney-General :

"The next question, and it is the most important question, that has been put to me is this: Do the Government intend that Dominion Status shall be given to India of the nature of Dominion Status after the Statute of Westminster? I am sure that those who have asked this question appreciate the fact that the Statute of Westminster did not mention, still less define Dominion Status. The phrase is often loosely used. It is just as well that we should remember that the word 'Status' in connection with the dominions was first used in the well-known paragraphs of the declaration known as the Balfour declaration—"there are

autonomous communities"—in Great Britain as well as the Dominions, remember that—"within the British Empire, equal in Status, in no way subordinate one to another in any respect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations." I make no attempt to improve on that historic statement."

This declaration was followed by a conference on the operation of the Dominion Legislation and Merchant Shipping Legislation which met in 1929 and suggested that Parliament should pass a declaratory enactment on certain lines. This was again followed by the Imperial Conference of 1930 which approved of the Report of the 1929 Conference and the result was the Statute of Westminster.

The preamble to the Statute of Westminster refers to the two Imperial Conferences and the resolutions passed by them affirm that the Crown is the symbol of the free association of the members of the British Commonwealth of Nations and then lays down as follows:—

"And whereas it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom be extended to any of its dominions as part of the law of that dominion, otherwise than at the request and with the consent of that dominion: and whereas it is necessary for the ratifying, confirming and establishing of certain of the said declarations and resolutions of the said conferences that a law be made and enacted in due form by the authority of Parliament of the United Kingdom."

The Statute then provides that the Colonial Law of Validity Act 1865 shall not apply to any law made after the commencement of this Act by the Parliament of a dominion. It then goes on to provide that

"No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the Law of the Dominion."

In point of fact Australia and New Zealand have still to adopt certain sections of the Statute of Westminster, nor have they, like Canada, appointed diplomatic representatives abroad. Roughly put, the Statute of Westminster secures to the Dominions legislative independence of the British Parliament and gives them full power to make laws having extraterritorial operations. One fails, however, to discover anything in this Statute of Westminster justifying the view that the legislative independence gives them the legal or

constitutional right to secede or declare themselves independent. As the Attorney-General rightly points out

“the words Dominion Status are meaningless apart from the Empire and, indeed, the words in the 1926 declaration, of which I have reminded the House, described the Dominions as ‘autonomous communities within the Empire.’”

There can be no such thing as secession “by your leave.” Secession must be a positive act of “independence” in spite of any constitution that British Parliament may provide. In one word, it is extra-constitutional.

On the political side the present writer feels like the Attorney-General that the question of secession is an academic question with regard to India. If the proposed constitution goes through, it would become still more academic for the federation will be a federation of the provinces of British India and Indian States which are bound by treaties with the Crown. It is inconceivable that these allies of the Crown can secede without first breaking the treaties or that they can be parties to any secessionist movement. It is possible to argue (as indeed some do) that if this is the meaning of an all-India federation, then why should any Indian nationalist favour it? The answer is simple. Indian nationalism cannot hope to enter into any bargain with Great Britain on the basis of secession and a constitution given by the British Parliament must more or less partake of the character of a bargain. Logically, those who talk of independence cannot put any constitution enacted by Parliament to that test, for it is inconceivable that Parliament will have a clause to the effect that India may secede if and when she likes. ‘Independence’ and ‘self-determination’ are comforting political phrases—but it is not easy to say what they mean nor is it likely that even British Left-Wingers if in power would, or would be allowed, to translate them into action. Meanwhile such phraseology can only tend to confuse the real issues and have the effect of creating prejudices, and suspicions here and in England and of dividing opinion in India itself.

The Attorney-General in disposing of this question referred to an acute observation of Lord Balfour in 1926. “You might as well consider all the causes of divorce before you decide upon the problems of matrimony.”

That the proposed constitution falls very short of the constitution of a self-governing dominion is patent. Judged in the light of the Statute of Westminster, India cannot be a Dominion unless its legislature secures legislative independence and full power to make laws having extra-territorial operations. The safeguards are bad; the reservations are probably worse. According to British opinion they may be justified by considerations of prudence or by the necessity of the situation but the safeguards and the reservations will go and will have to go. How soon they will go, or how much time they will take in going, does not in a political sense exclusively depend upon the will of Parliament. They also depend to a very large extent upon our will. We have got to set our house in order, we ought not to

defer the putting it in order until the most perfect conditions of wind and weather prevail. It will serve no useful purpose to forget that we are divided, have tried to be united and have again and again failed. No one need go into any enthusiasm over the proposed constitution but no one need play either the wrecker's game, whether they are English or Indians. In summing up the character of Julius Cæsar, Mommsen says—

“What was possible he performed; and never left the possible good undone for the sake of the impossible better, never disdained at least to mitigate by palliatives evils that were incurable.”

It is in some such spirit that the present situation has to be approached and a way paved for a better situation.

April 1935.

The new situation needed a correct understanding of the implications and peculiar difficulties of the problem of Federation. There were several matters of importance between the Princes and the present Government of India which awaited settlement before the proposed constitution came into force.

CARDS ON THE TABLE

By "AUCTION"

Although the Government of India Bill is still under discussion in the House of Commons, opinions have already been expressed on its provisions in England and India which are sufficiently revealing to enable, if not a forecast of the prospective relations of the two countries, yet an analysis of the ideals and aspirations that have inspired those varied opinions, to be made.

The Bill has found few supporters. That is hardly to be wondered at. A document so large in volume and so wide in compass, representing a landmark in Imperial policy and, in more than one respect, a break from a long established order of things—a document, too, intended to satisfy the demands of a vast congeries of peoples, was bound to offer a large surface for criticism of every description. And such criticism, from the nature of the case, could not be otherwise than *interested*, whether that interest arose from patriotism or party loyalty, honest misgiving or merely blurred vision. Nor should it be forgotten that patriotism itself, according as the mother-country varies, can adopt antipodal outlooks: so much so, as the experience of practical politics verifies, that it can be narrowed down to the ambition of a particular faction. Therefore, it were futile merely to explore moral springs or criticism in any controversy so multinomial.

There is the natural contrariety of view between England and India. In England itself there are the different standpoints of view of the normal Conservative and the Diehard, of the Liberal and the Labourite, as in India there are the Hindu and Muslim, the Congress and Nationalist, the States and British Indian, so many different approaches to the problem.

Nevertheless, given the necessary detachment in analysis, the merits or the demerits of the Bill can still be brought out. And they would be best brought out if the background of its conception and purpose were consistently borne in mind and its outstanding specific

provisions tested on the anvil of that purpose, otherwise the policy of the Bill.

It is possible for any of the several schools of thought to quarrel with that policy. Some may think it unduly conservative; others worse, that it is utterly selfish—and the Bill a mockery of the purpose professed. Yet others may say, as they have said, that it sounds the death-knell of the British Empire! There are not wanting those, either, who have impugned the Bill as a Mephistophelean performance. But if in a matter of such moment temerity be permissible, for all these critics the natural background has not existed.

In the light of History there has been a lapse on the part of His Majesty's Government in framing, and on that of the politicians of British India in criticising, the Bill.

The former, in defence of the unusual features of the Bill have contended and rightly, that they were not writing on a clean slate, that they were legislating for conditions completely unparalleled in the history of any known Federation. The question remains, whether due regard has been paid to the ingredients of the Indian Mosaic.

In contrast with this, the latter have dealt with the now crystalised scheme, from its earliest fluid stage, as if the history of India had begun with the first measure of Local Self-Government in that country and have argued as if there was in it an exclusive interest of which they were the natural guardians and the only rightful advocates. They have completely forgotten that the States existed even in Mughal India and survived it: that the dawn of the 19th century found the East India Company still trying conclusions with the States: that the Crown became identified with the government of British India only after the upheaval of 1857: that British Supremacy did not become an acknowledged fact until 'Clemency' Canning claimed and announced it in 1860: that before him, Dalhousie's Doctrine of Lapse aiming at the gradual extension of that Supremacy had proved to be dangerous and had had to be abandoned and—more than all—that, until much later, the policies introduced and measures initiated by the British Government were not even secondarily for the benefit of the present day "custodians of India's interests" and champions of "India's" rights.

Even His Majesty's Government, while sincerely anxious to stand by Britain's plighted word as embalmed in the Treaties with the States, (apart from what happened in 1908 and 1919), partly due to a continuous extension of Paramountcy and partly under the stress of a policy pursued during the last 70 years, have been induced or have felt obliged to take too broad a survey of their obligations vis-a-vis the States, in general, and individual States, in particular. The exigency of imparting to their proposed Statute the ensemble or verisimilitude of a recognised pattern has rather introduced into their scheme something of the Procrustean method and the stretching entailed has naturally occasioned many groans.

No one can be so wanting in a sense of proportion as to suggest that the Bill should have provided for the discharge, in the financial sphere, of the obligations incurred by Britain in India to individual States. Such a provision would necessitate something worse than a patch-work Constitution and destroy the very basis of the scheme of Federation. And yet the latitude permitted to the States in the "Instruments" of their Accession seems not less likely to produce in practice, a "quilt of variegated pattern." But the effort to avoid a constitutional hotch-potch has undoubtedly tended to create an *imperium in imperio*.

If the financial exigencies of the British protectorate of India had admitted of it, the Bill could have contained provisions, especially in regard to Taxation, which would automatically have secured justice to such States at least as have largely contributed to the present area and resources of British India.

The position that emerges from the Bill is, the States must doubly contribute towards the Defence of India through payment of Import Duties and the maintenance of troops for service with the British Army; in addition, they must provide for their own defence. Further, in the interest of the general trade and commerce of the country they must, as soon as practicable, give up levying what are purely revenue duties, their own Customs on exports and imports. None the less, they must maintain forms and standards of political life and administration which, as British Indian politicians have demanded, must be not merely analogous to, but on a par with, those favoured and adopted in British India. Any so-called concession, in reality consideration for old contracts, not always prospectively favourable to the States, must be classed as 'Immunities,' to be set off against the assets in the States' Balance Sheets of Credits and Liabilities. Furthermore, on the principle of uniformity of taxation, the States must pay too their share of all levies and imposts whether known to their own fiscal system or not.

This has been urged by the spokesmen of the British Indian ryot, i.e., by those many of whom reside in territories that would still be parts of one State or another, but for the fortunes of War or Diplomacy; the former waged by the English organising genius and the latter equally conducted by the exponents of British statecraft.

In 1930, to sustain every argument and to justify every demand, it was sufficient to point out that British India was paying certain taxes which the States were not. The difference between Provincial and Central taxes was completely overlooked as was the fact that the tax-payers in the Provinces have provided for them amenities, and, indeed, essential protection, which the States are responsible to provide for themselves. The fact that under the scheme of things obtaining the States have not the same sources of revenue open to them as are at the command of the Finance Member of British India, and that this fact combined with the various limitations upon the development of the natural resources of the States leaves the States the fewest possible means of raising revenue, was not the concern

of India's statesmen to take into account. And yet, if the States ask that the revenues at present enjoyed by them, or prospectively enjoyable by them, should be left un-tapped, they are stigmatised as selfish and wanting to get everything and give nothing!

The real misfortune of India is not the presence of the States; it is her stagnant, unexpanded resources, combined with a scheme of government unavoidably more expensive than the development of her resources warrants. For this misfortune the price which the States are expected to pay for the privilege of joining the Federation is that, without looking back too much, they must agree to augment those resources.

If the Central Government did not need the revenues which are held to be indispensable for its operation and its very existence, would the clamour of the Industrialist or trader of British India obtain the responsive support which it always receives, against the diversion of trade to the States or the development of Industries therein?

It has never occurred to the protagonists of British Indian interests that the demands they have put forward, more often successfully than not, were rendered possible only by the fact of British paramountcy to which they, of British India, did, and could do nothing to impart its present scope; or that if the States had remained the "foreign" or merely allied Powers which they were, the satisfaction of those demands would be crying for the Moon. In the economic sphere proof of this contention is to be found in the helplessness of the States *inter se*, in particular of States with coterminous boundaries.

Thus a clue may be found to the secret of the alarm reflected in the States' criticism of specific Clauses of the Bill, intensified probably by a genuine, though perhaps unjustifiable, fear of the loss of internal autonomy. But a strictly psychological analysis would reveal that the real apprehension which underlies the horror of the disappearance or diminution of Sovereignty is the dread of unforeseen financial burdens—burdens that might be the concomitants of an 'organic union,' expressed in the unfamiliar language of the parliamentary draftsman and alleged by the lawyers to be capable of interpretation by the Judges far beyond the intention that might, for years, have served as commonly understood.

There has been much talk of the Princes' Legal Advisers. Presumably lawyers of all ranks, including those of the front one, have been variously solicited and briefed. What has probably happened is that the cases or questions put to these experts, bound as they are by an established professional tradition and a rigid etiquette, were framed on data, honestly believed to be facts but, in historical perspective or from the standpoint of "political practice," answering to that description, not unqualifiedly.

The lawyers could only assume that the implied basis of the case submitted or questions propounded was wholly, and not only partially, a fact. It was none of their business to look beneath the

substratum of the propositions formulated and in expressing their opinion on the questions posed, they could but assume that the basis for them did exist.

An initial laxity of thought or looseness of conception in the statement of the case would easily evoke opinions that would be legally tenable, if the statement were founded on inexpugnable premises, but wide of the mark and utterly inapplicable on even a slightly altered basis.

Does the White Paper or the Joint Parliamentary Committee's Report or the Bill safeguard the Sovereignty of the States? No.

Post hoc ergo propter hoc.

The 'Snag' does not leap to the eye but it is there, nevertheless. Counsel had not been asked to start from examining and himself determining the degree of Sovereignty enjoyed by the States, whose name is legion, nor could he be, for, to do so, he must have before him the case on the point, *pro and contra*.

Here is a possible explanation of the knots into which the Princes doubtless found themselves tied and, therefore, of their recent attitude towards federation, already less averse, by the latest reports.

That they will enter need not be doubted, but if they get their bare 'historical dues,' their entry must be the speedier and, unquestionably, speaking for individual States, a way must be found by provisions in the Bill, to secure to them the possibility of financial justice.

This is the more necessary because every one, including the Princes, knows in his heart of hearts that the association of British India and the States, to the end of securing equitable treatment to both parties, in the economic and financial field, is the supreme need of the present time, if the general contentment of the country be at all a desideratum; and that such association can only be brought about by a Constitution Act, broader-based than any that India has so far had, i.e., an Act providing for the federation of the States and the British Indian Provinces.

It cannot reasonably be held that the anxiety of the Princes is unnatural, namely, that before such a Constitution comes into force, the questions between them and the present Government of India, however few or many, which have been outstanding for years, should be finally settled; or their apprehension that otherwise those questions would be submerged under the spate of neutralising provisions or invalidated by their own laches.

It must be added that this anxiety was clearly voiced and the demand, following from it, explicitly formulated at the stage immediately antecedent to the framing of the Bill, apart from a definite expression of the earnest desire to know exactly how they were going to stand if Federation came, e.g., they asked for a clear definition of the "Emergency" which would justify a levy on their resources and they themselves suggested a definition, in order not to leave their own attitude in any doubt.

CARDS ON THE TABLE

They may have been ill-advised in additionally asking for a precise definition of the scope of Paramountcy but the real intention behind the suspect tactics might have found more charitable reading.

Did they intend to question the fact of 'Paramountcy,' merely because, as a result of confused thinking, the "contractual basis of relationship"—a theory publicly pronounced some years ago to be untenable—had been raked up on their behalf?

"The Paramountcy of the British Crown" has been admitted by the States to be "a fact beyond challenge."

It occurs to the detached thinker to ask, how did the minds of the Princes and their advising Ministers work? Does the explanation of the unseasonable introduction of an issue,—*sui generis*, unarguably distinct and separate from the scheme of the Bill, lie in the fact that, on the one hand, the Princes had their experience of the Proteus and, on the other, they found him still dominating the scheme of the future?

Perhaps the Princes only sought and hoped for a confidential assurance that ceremonial matters will in future be governed by recorded practice or that matters obviously unconnected with the true purpose of Paramountcy which, in their view, is only concerned with unquestionably Imperial interests, will be declared to lie beyond its pale in the future.

Whether the move was an ingenuous product of an unflagging faith in the 'domestic tie' and avuncular sympathy, or it was a disingenuous manoeuvre to force a bargain, in the result, at any rate, the air has been cleared; there are no *arrière pensée* left on either side and the stage is set for a real human drama of mutual help and co-operation.

Was there ever any serious doubt of ultimate co-operation or of the desire and the readiness of the Princes to co-operate? An affirmative answer to such a question can only be returned by those who have their own ends to serve.

It were too long to analyse in a similar manner the psychology of all the schools of critics—suffice it to say that some of them in India may have a case, so long as the Bill is viewed from the communal, provincial or rather parochial point of view. The super-patriots in England do not appear to have any, except what they have unabashedly put forward, namely, "Everyone for himself and God for all."

Federation is dead, long live Federation!

May 1935.

A meeting of the Princes and their Ministers was held in Bombay in Feb. 1935 to consider such clauses in the Government of India Bill as affected the interests of the States. The unauthorised publication of its in camera proceedings in some London papers created a wrong impression in England. The attitude of the Princes to Federation had to be defined clearly.

PRINCES AND THE INDIA BILL

By HISTORICUS

The unfortunate publication of the speeches at the private meeting of Princes and Ministers at Bombay in February gave rise to the impression that the Princes had objections of a fundamental character against the Bill. While no doubt the points which the Princes and their advisers raised were fundamental, in the sense of being vitally important, to them they were in no way fundamental to the structure of the Bill as was promptly proved by the Secretary of State in his comments embodied in the White Paper and the subsequent amendments offered on the points by His Majesty's Government. Nor did the Princes, pace the outbursts of the reactionary press, take any other view. This is clear from the joint letter addressed by Their Highnesses the Maharajas of Patiala and Bikaner and the Nawab of Bhopal which, after offering detailed criticisms of the provisions, concluded by saying that it should not be beyond the powers of statesmanship to reconcile the point of view of the Princes with the basic provisions of the scheme.

It is nothing surprising that in the case of every complex and elaborate legislative measure, however carefully it may be drafted, there should be amendments both of substance and of form from interests affected by it. In a case like the India Bill which is comprehensive in its scope and extremely complicated in its details, it was only to be expected that a large number of amendments should have been suggested from all sides. In fact, the number and variety of the amendments moved on behalf of His Majesty's Government showed that it was but part of normal procedure that either in order to meet new points, or to elucidate matters not clear in drafting or capable of different interpretations, criticisms of the bill and suggestions for its betterment should be placed before Parliament by those affected by its provisions. Especially was this so in the case of the States. A Parliamentary statute does not bind them, but as the Bill was being brought forward as a result of agreement, and it

was understood that the States would accede to the Federation if their conditions were satisfied, it was essential that whatever objections they had to the actual provisions of the Bill should be placed before the Secretary of State in due time, both in their own interest and in order to be fair to His Majesty's Government whose policy was dependent on the accession of the Princes.

It is unnecessary to go into the circumstances which led to the exhibition of strong feelings at the Bombay meeting: but in order to enable the public to understand the attitude of the Princes and their advisers, it is desirable to state certain facts briefly and without comment. The Chamber of Princes met on the 22nd January and passed a Resolution reaffirming the attitude of the States towards Federation, but declaring at the same time that the final decision could only be taken after the Bill had been carefully examined. An assurance was also given by the Viceroy that the opinion of the Princes on the Bill need be given only after they had an opportunity of considering it at a meeting of Princes and Ministers to be called at the end of February. The India Bill was published *two days after the session of the Chamber of Princes*. Within a week a letter was received through official channels by the more important States that any criticisms that the Princes might have on the general clauses affecting Federation should be sent in at the latest by the 14th Feb., i.e., ten days *before* the meeting called expressly to discuss the Bill. This ultimatum—for it was nothing else—created consternation, and for the first time since the Round Table Conference began, all the States united in protesting against being rushed blindfold into a federal scheme the detailed provisions of which they were not given time to discuss. One realised the difficulties of the Secretary of State. Hard pressed by the exigencies of parliamentary business, with the Budget discussion coming, and the European situation daily worsening, it was of the first importance to him that the India Bill should get through with the minimum delay. But it is necessary also to realise the position of the Princes. They had given their approval to the federal idea. Their representatives had negotiated agreements on many important details. But the Bill was a different matter. It had to be examined clause by clause from the point of view of substance and drafting. It was necessary to scrutinise the legal effect of every word and every clause. The financial, Railway and Federal Court provisions required examination by experts. Clearly, it was better that the Princes should put forward their views when there was still time for modification than stultify the whole scheme by saying, after the Bill had been enacted, that its provisions were unacceptable. A detailed examination of this kind required time, and the demand of the Government that the Princes should send in their criticisms before the 15th February appeared to the States to show a lack of appreciation of their position. Fortunately, when the matter was pointed out to him, the Secretary of State agreed that the amendments of the Princes would be considered if handed in before the Report stage.

It was after receiving this assurance that the Ministers' Committee met at Delhi on the 19th February. The composition of this Committee is itself interesting. It consists of Sir Akbar Hydari, Sir Mirza Ismail, Sir V. T. Krishnamachari, Sir Manubhai Mehta, Sir Liaqat Hyat Khan, Sir C. P. Ramaswamy Aiyar, Sir Prabhasankar Pattani, Mr. Bapna, Mr. Atal, Mr. Abbassi, Mr. Panikkar, Mr. D. K. Sen and Mr. Tombare. It will be noticed that everyone of them has been intimately connected with the federal scheme from the beginning. Most of them were pronounced advocates of Federation. They studied the Bill clause by clause with the help of legal advisers in England and in India and formulated certain criticisms—some of substance and some of drafting—and communicated their views in the famous letter addressed to Sir Bertrand Glancy.

Four days later the Princes met at Bombay. The meeting was originally planned to extend for four days, but lasted actually only four hours. All that the Princes did at Bombay was to reaffirm emphatically the criticism of the Ministers. There was no question of accepting or rejecting the Bill. The Ministers' Report was based on the assumption that the Bill would be acceptable if the amendments put forward were incorporated in the Bill. The Princes took up exactly the same point of view and gave their authority to the criticisms of the Ministers.

It is very greatly to the credit of Sir Samuel Hoare that in spite of the unfortunate impression created in England by the publication of the speeches delivered under the seal of secrecy, and its exploitation by Mr. Churchill and others, he interpreted the position of the Princes correctly and refused to be rushed into hasty action. The White Paper which was issued on the question discussed sympathetically the Princes' criticism in detail and promised the necessary amendments in the provisions of the Bill to which objection was taken by the Princes. He also decided that consultation between the legal advisers of the India Office and the Counsel of the Princes was the procedure most suited to the occasion.

Now, the criticism of the Princes apart from suggested verbal amendments, either for purposes of elucidation or for elimination of ambiguity, dealt with three important matters viz: the method of accession (Clause 6): the breakdown provisions (Clause 45): financial arrangements. With regard to Clause 6 the position of the Princes was briefly as follows :—

The original Clause 6(1) read :—

“A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of a declaration made by the Ruler thereof, whereby the Ruler for himself, his heirs and successors—

- (a) declares that he accepts this Act as applicable to his State and to his subjects, with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall exercise

in relation to his State and to his subjects such functions as may be vested in them by or under this Act;

- (b) specifies which of the matters mentioned in the Federal Legislative List he accepts as matters with respect to which the Federal Legislature may make laws for his State and his subjects, and specifies any condition to which his acceptance of any such matter is to be deemed to be subject; and
- (c) assumes the obligation of ensuring that due effect is given to this Act within his State : ”

Provided that a declaration may be made conditionally on the establishment of the Federation on or before a specified date, and in that case the State shall not be deemed to have acceded to the Federation if the Federation is not established until after that date.

“The Structure of Accession” contemplated in this clause was unacceptable to the Princes for 3 reasons: (1) It made the entire Act, subject to certain specific limitations binding on the States, thereby giving unlimited scope for the development of ancillary powers; (2) It subordinated the Treaties of accession to the Act, instead of, as had always been understood, making the Instrument of Accession govern the Act so far as the States were concerned; and (3) there was no provision that the powers delegated by the States to the Crown were *only* for the purpose of the Federation. The structure of accession is a matter of the utmost importance to the States as their relationship with the Federation, no less than the preservation of their internal autonomy in the non-federal sphere, is dependent on the conditions under which they accede to the Federation. Unless it was made absolutely clear that the States were bound only to the extent of their accession as defined in the Instruments and under the conditions and with the limitations specially laid down therein, there is always the possibility of unseen encroachments on the reserved sphere by the federal power and the gradual, though imperceptible, aggrandisement of federal authority at their expense. The original Clause 6 did not fulfil the requirements of the Princes. The Princes were advised by their lawyers that it was vitally important to them to secure a suitable amendment to this clause and the main criticism of the Bill from the point of view of the Princes was directed against it.

The next vital point was Clause 45, generally known as the breakdown provisions. In the Bill as originally drafted, Clause 45 enabled the Governor-General, with the concurrence of Parliament, to suspend the constitution indefinitely. The criticism of the Princes was that they were surrendering certain powers specifically for the purpose of the Federation, and that an indefinite suspension of the Constitution would virtually amount to an assumption of those powers by the Crown. They insisted that the right to govern extra-constitutionally must be subjected to a time limit and if the constitution continues to be suspended after the specified period, then there should be an automatic reversion of powers to the States.

In regard to Federal finance, their main criticism was that the conditions embodied in the declaration made on behalf of the States by Sir Akbar Hydari at the Joint Parliamentary Committee, which was accepted as being reasonable in the J. P. C. Report, were not given effect to in the Bill. The Hydari declaration stated that:—

“(1) a minimum of 50 p. c. of income tax should be permanently reserved to the Federation.

(2) that for the first ten years Federation should have the right of keeping a larger percentage than 50 for the sake of financial stability.

(3) Federal surcharges on income will only be put on in cases of emergency.”

There were, of course, numerous other points which the Princes raised, but these were the only points in which there seemed to be a difference of opinion between the States and His Majesty's Government. In most of the other cases there was no serious difference in principle. The question was mainly either of wording, or of making the meaning of a clause more precise. His Majesty's Government were from the beginning prepared to meet the States' points of view on all such matters, as the White Paper clearly indicated.

In the Ministers' Report two other important questions were raised, though they concerned only a certain number of States and were not of common interest. They related (1) to the definition of Privileges and immunities which it was originally intended should be taken into account and set off against payments due from the Federation to the particular state, and (2) to the powers of the Railway Authority and the relation of that Authority to State Railway administrations. The point of view of the States which enjoyed the so-called immunities and privileges was that in reality many of them were not privileges at all, but consideration for some contract entered into by the Crown. The feeling of these States was that except when there were demonstrably privileges granted without consideration, the principle of set off should not be brought into operation. So far as the question of the Railway Authority was concerned, this was treated from the beginning as a matter for special negotiation between the Railway-owning States and the Government.

The Joint Note of the Princes also raised the question of paramountcy. It was the view which the Standing Committee of Princes had always expressed that before the States are asked to enter into Federation, the claims put forward by the Government under Paramountcy should be defined and delimited. Sir Samuel Hoare's reply to this demand was that the Constitutional Bill only attempted to regulate the relations between British India and the States in a certain specified sphere, and as it was common ground that the paramountcy relations between the State and the Crown lay outside the federal sphere, it was impossible to mix up the two questions.

On the criticisms and suggestions offered on the Bill itself, Sir Samuel Hoare expressed the willingness of His Majesty's Government

to discuss with the legal advisers of the Princes—both with the Counsel for Hyderabad and the Counsel engaged on behalf of the Chamber of Princes. The Princes, recognising the importance of these negotiations, authorised a small body of Ministers to instruct the Counsel (Mr. Wilfred Greene, K.C., Prof. J. H. Morgan, K. C. and Mr. McNair) and to draft amendments strictly in accordance with the views expressed in the Joint Note of the Princes and of the Hydari letter. The decision of this Committee, which consisted of Sir Manubhai Mehta, Sir Liaqat Hyat Khan, Mr. K. M. Panikkar and Mr. D. K. Sen, was another definite indication that the Princes were sincerely anxious to go through with the Bill.

The discussions with the India Office experts took place in the first week of May. As a result, no less than 26 clauses of the Bill were amended in the light of the Princes' criticism and the provisions relating to accession, the breakdown of the constitution, and federal finances were altered definitely to suit the point of view of the Princes. The Bill as it has emerged from the House of Commons may be said to have scrupulously tried to safeguard the interests of the States and the Rulers and to give effect to every reasonable criticism or suggestion put forward by the representatives of the Princes.

Of course, it is for each individual Prince now to say whether he accepts the scheme for his State. The time for collective discussions and consultations is definitely past. The stage for such discussion and consultations was when the Bill was on the anvil and it was possible to suggest general amendments in the interests of the Princes as a whole. Now that the Bill is about to become an Act, the choice lies with each individual Prince. The idea that either the Chamber of Princes or any territorial group should take a decision goes fundamentally against the sovereign character of each State.

So far as the choice itself is concerned, it is well to remember that this constitution offers to the States for the first time a definite voice in the formulation and determination of all-India policy, while safeguarding in every possible manner the internal autonomy and the treaty rights of the States. It gives them an almost dominant influence in matters of common concern to the whole of India while consolidating their own authority and power. It would be more than foolish if, in a spirit of political recklessness, the Princes were at this stage to turn back on this scheme, but obviously in view of their own interests, such a course may be said to be definitely out of question.

In conclusion, it would only be fair to say that this satisfactory termination of a drama which on more than one occasion threatened to become a tragedy, is due not only to the statesmanlike attitude of the majority of the Princes and their advisers, but to the patience, tact and foresight with which Sir Samuel Hoare, convinced of the rightness of his cause and firm in his determination to meet every reasonable point of view, handled the situation, especially after the Bombay Conference. The gratitude of all connected with the States is due to him in an exceptional degree.

July 1935.

The Royal Assent to the Government of India Act was given on August 2, 1935. The Act became an accomplished fact. India's reaction to it was on the whole extremely unfavourable, and leading political organisations showed no inclination to give it a fair trial.

INDIA UNDER THE NEW CONSTITUTION

By THE MARQUIS OF LOTHIAN

I

It was with some sense of relief that, after five years' continuous service on Round Table Conferences, the Franchise Committee, the Joint Select Committee and many debates in Parliament itself, I heard the Royal Assent given to the Government of India Act, 1935, almost exactly eighteen years after the famous pronouncement of August 1917.

There is, admittedly, no jubilation anywhere about the Act. Opinion in England is doubtful whether so novel an experiment in so large and diverse a country can be made to work, and is a little mournful at the ending of a romantic and memorable chapter in her imperial history. Opinion in India is said to be sore and disillusioned, partly because of the multitudinous safeguards in the Act and partly because the immense practical difficulties of responsible government in modern India are forcing to the background the roseate but less well instructed hopes of the earlier days of constitution building.

This disillusionment and lack of jubilation is, I think, a hopeful omen. It has been characteristic of the birth of nearly all the great constitutions which have stood the test of time. So unpopular was the work of the Philadelphia Convention that for long it was doubtful whether the American Constitution, which Gladstone once called "the greatest political instrument ever struck off by the hand of man at a single time," would come into effect at all. The South African Constitution was only approved amid bitter criticism and was almost wrecked at the last moment because neither Cape Colony nor the Transvaal would concede the capital to the other. It was much the same in Australia. These constitutions were unpopular at their inception because, as in the case of the India Constitution, almost every line was a compromise between conflicting interests and ideas, leaving no party fully satisfied or enthusiastic and everybody uncertain of the future. On the other hand the constitutions which have represented

the triumph of a party or a political theory, and were enacted amid popular excitement and acclaimed as masterpieces of perfection have mostly disappeared. I remember well the enthusiasm over the new and liberal constitution of the Union of liberty and progress in Turkey in 1909 and I saw the famous democratic Parliament of China functioning in Peking in 1912. Where are they now? And where is the Weimar Constitution—that model of progressive orthodoxy or the post-War Constitutions of Italy or Jugoslavia, Poland or Greece?

So I am re-assured rather than alarmed at the way in which the new Indian ship of state has slipped into the water quietly—after seven years of unhurried, honest, strenuous labour—with no demonstrative cheers. For it is a craft which every party and interest in India and in Britain has helped to mould into shape, the Princes, the great band of Indian liberal statesmen who fought so hard for four years in London, the leaders of the minorities, Mahatma Gandhi, Congress far more than it realises, women, the depressed classes, landlords, businessmen, the provincial and All-India Ministers, Viceroys and Governors, the I.C.S., members of the British parties and after everybody else had had a hand, the queer, old, inorganic Mother of Parliaments herself, uninformed about local Indian conditions but curiously sane in her power to reflect the common sense of the most experienced and stable democracy in the world. Anomalous and unprecedented as some of its features are, it may well be that this creation of compromise may have laid foundations which will survive when the more impetuous creations of vehemence, intolerance and haste of which we have seen so much in recent years, have crumbled into ruins.

II

From my somewhat inadequate study of the Indian press there seem to be four main grounds for opposition in India to the new Act: objection to federation with the Princes; objection to the Communal Award: objection that the new constitution unduly entrenches the vested interests of property: and the objection that the Act leaves India so fettered with safeguards that responsible progress on her own lines will be impossible.

I do not propose to discuss, except very briefly, the first three objections, for in this article I am mostly concerned with the fourth. Admittedly the composition of the federal centre is highly anomalous. But the dangers to the unity of India which would spring from attempting to launch self-government on anything but a federal basis are immeasurably more serious. It was the realisation of this by the most statesman-like Indian delegates which led them to accept the offer of the Princes and the ratios of representation between British India and the States at the First Round Table Conference, and these were acquiesced in by Mr. Gandhi at the Second Round Table Conference.

The entrenchment of the system of separate electorates in the

new constitution is a serious impediment to the smooth working of the system of responsible government. But the Communal Award was only given, as Sir Tej Bahadur Sapru justly said in the January issue of this Review, after every effort at agreement between the minorities had failed, even under the chairmanship of Mahatma Gandhi, because it was the only condition upon which the development of an Indian constitution could be continued. Moreover, communalism is a political fact for which a place must be found unless worse evils are to befall. The refusal to recognise this led to the Thirty Years War and the division of Europe into an anarchy of separate racial and linguistic states and more recently has split Ireland into two. Unless European experience does not apply, refusal to give constitutional recognition to the political reality of communal feeling might have split India in two and even led in parts to civil war. It may well be that a system whereby communal issues are dealt with by responsible men and women in the legislatures and Ministers instead of being used as the material with which to inflame electorates, may enable India to avoid disasters to its unity and gradually move towards organic unity as minorities come to trust majorities not to abuse their power.

Vested interests are undoubtedly strongly represented in the new constitution—especially in the second chambers. On the other hand, the ultimate political leverage will rest in the hands of about 35,000,000 electors, who will comprise over 43 per cent of the adult male population of British India. Unless all democratic history is wrong these electors will gradually learn how to protect themselves.

III

I come now to the central problem with which the Constitution attempts to deal—the relations between Britain and India. Is the Act a reasonable, practical and honourable solution of that issue? Does it transfer immediately real responsibility for Indian Government to Indian hands, and does it open the road to that Dominion Status which has now been re-affirmed as the natural issue of the declaration of 1917 and the preamble to the Montagu-Chelmsford Reforms?

The root of the difficulty of the past fifteen years in India has been the estrangement of a large—probably the most dynamic—part of the political classes in India from government. The Montagu-Chelmsford Reforms failed to enlist the support of the Indian National Congress behind law and order, for industrial and economic development, for social reform. In one form or another it went into non-co-operation and therefore set out to weaken government and to obstruct rather than assist progress as the means of securing the transfer to the legislatures of far greater powers than those contained in the 1920 Act. There is no use today in trying to assess the relative responsibility for this fact. Some hold the view that this estrangement was due to the limitations of the Act itself and to the determination of Great Britain and the I.C.S. not to relinquish power.

Others hold the view that it was due to the irresponsibility of Congress leaders themselves who wanted to dominate at once and were unwilling to learn by experience. It will suffice to record the fact of non-co-operation—a fact which drove Edwin Montagu in a melancholia of disappointment to his grave.

But that the estrangement has been bad for everybody is beyond all question. It has not broken down government. But it has led to three campaigns of civil disobedience and of consequent repression. It has tended to separate the majority and the minority communities and to divide both Hindus and Moslems into co-operators and non-co-operators. It has hindered economic progress and social reform by diverting a great part of Indian political energy into obstruction. It has made the administration perhaps more rigid and induced habits of irresponsibility in political leaders. It is infinitely better for a people to reach political manhood by assuming responsibility rather than by long experience of unconstitutional opposition. The new constitution will only succeed if it can prevent repetition of this evil and can mobilise the political classes apart from quite irresponsible extremists behind good government, agricultural and economic progress and social reform.

The new constitution, in my view, removes all substantial ground for non-co-operation because it puts the initiative and the primary responsibility for every aspect of the internal government of India on to the shoulders of majorities in the legislatures, though it sets up ample safeguards in reserve.

IV

The core of the Act is that the centre of political gravity in India will pass from British to Indian hands—if the Indian Princes and the British Indian electorate return legislatures which are capable of assuming responsibility for the government of India. Under the Montagu-Chelmsford Reforms the responsibility of the British Parliament for the government of India, both central and provincial, was preserved fundamentally intact. The Viceroy's Executive Council was responsible for the Government of India as a whole and was accountable for it to the Secretary of State and not to the Legislative Assembly and the Governors were responsible for law and order and finance in the provinces—the twin keys of power—and were accountable for them to the Viceroy and the Secretary of State and not to the legislatures. It was only secondary functions like education and local government which were transferred to Ministers responsible to the provincial legislatures and they were limited by the official control of finance. There may have been much to say for this system as a method of training India's future rulers, considering the complexity of her problems and her relative inexperience of parliamentary institutions. But, in effect, the 1920 Act gave India influence and not responsibility, and as George Washington observed, "Influence is not Government."

The new Act fundamentally changes this. Under it the primary

responsibility for every aspect of India's internal government—including law and order and finance—will rest on Ministers responsible to legislatures, both provincial and federal, in which there will no longer be any official blocs. The direct administrative responsibility of the Viceroy, for which he will be accountable to the Secretary of State, will be limited to the defence of India against external attack and foreign policy. The responsibility of both Viceroy and Governors in internal affairs will be limited to the right to intervene should there arise a grave menace to the peace and tranquillity of the country or if the legitimate interests or statutory rights of the Princes, minorities, or the Services are menaced, or, in the case of the Viceroy only if the financial stability or credit of India is impaired. Should one of these situations arise, Viceroy and Governors will be endowed with ample constitutional powers to make their intervention legally effective. But the initiative will rest in Indian hands. Thus the basis of the new Act is responsibility and not influence and unless every bit of experience in England, in the Dominions and in Europe is to be falsified, once the principle of parliamentary initiative and responsibility for finance and law and order is introduced power will pass steadily and inevitably into the hands of the representatives of the people, provided, as has been the case in the Dominions, the legislatures prove competent to give good government.

It is this central fact which has been the reason for the long, determined and bitter fight put up by the Diehard section of the Conservative party against the Bill. They fought the Bill partly because in their view it involved the "surrender" of that British power over India which England has wielded for 100 years. They fought it partly because they have been honestly convinced that without British control the unity and good government of India would disappear in a chaos worse than China's. Sitting in the House of Lords during long hours of wearisome debate over "Diehard" amendments, I have often felt that the real ground of difference between myself and them was that I believed that the political classes in India would rise to the level of the tremendous and difficult responsibilities which the Act will place upon their shoulders while the Conservative opposition—most of whom had little acquaintance with modern India—did not.

None the less the "Diehards" are right in this: The Bill does involve the transfer of the citadel of power in India to Indian hands—if the legislatures prove able to discharge the responsibilities which attach to power with a reasonable degree of success. It has seemed to me one of the most hopeful omens for that fruitful future co-operation between British and Indians which is essential if a paper federal constitution for India is to be clothed with flesh and life, that the Conservative party both in its annual meetings and in the House of Commons and the House of Lords voted, against all its hereditary instincts, by majorities of three to one, to transfer control over India to Indian hands, if those hands proved able to exercise it, despite all the temptations to qualify or delay, caused by the failure of the civil disobedience movement in India itself, and the apparent

collapse of democracy and the revival of imperialism throughout the world.

V

Fundamentally, therefore, the future in India will rest in Indian hands—in the hands of those, that is to say, who are returned to the legislatures by the Princes on the one hand and the electorate on the other. If that is so, I can hear my Indian friends reply, what is the need for the meticulous and multiplied safeguards, for the statutory entrenchment of the rights of the Civil Service, and for the elaborate edifice of minority rights. Why have Liberals in Parliament, while objecting to some safeguards as being unnecessary and useless, on the whole consistently supported them, since central responsibility in a federal legislature was made the basis of the constitution?

The reason is that contained in the words I have just used—if the Indian legislatures prove equal to the responsibilities now put upon them. It is no disrespect or dishonour to India to use these words. The art of government as Aristotle observed, is the noblest and the most difficult of the arts. Democracy or Parliamentary government is the highest and the most difficult of governments. It is the form of government which has best stood the tests and ravages of the Great War and which once again is proving its superiority as against all the forms of dictatorship which weaker peoples have succumbed to amid the strains and strifes of the post-War age. It is the form of government which political India has always desired—though some of her young enthusiasts unmindful of the lessons of recent years, are playing with the ideas that party dictatorship may be an improvement upon it. But it is also the form of government which has most frequently disappeared where the education, political and administrative experience and moral courage necessary for its maintenance have not been sufficient. Successful democracy does not merely mean that there are people who see what ought to be done. It means that these people come forward to stand for their principles amid all the fury and fatigue and misrepresentation of public life, and that a majority of the electorate support them, despite every distraction and temptation offered them by demagogues to vote for selfish or shortsighted alternatives. And in India the problem is immeasurably more difficult than in any other country of the world. It is one thing to establish parliamentary government in Dominions containing not more than 10,000,000 people, or in an ancient, homogeneous and compact racial community of some 50,000,000 people such as Britain or France. It is more difficult to maintain it in a great area containing 120,000,000 people even though they speak one language and profess one civilisation though of differing racial origins, as the United States is now finding to its cost. But to make a success of responsible government in a country inhabited by 350,000,000 people rapidly increasing in numbers, still largely divided by race and language and religion, and uniting the representatives of autocratic Indian

States and democratic provinces in a single legislature, is an entirely different matter. It is clearly as formidable as it is unprecedented, especially where the political classes are relatively small in number and to a large extent without governmental experience and the electorate is largely illiterate.

In such circumstances the provision of safeguards, so far from being obstacles in the way of that successful discharge of the responsibilities of government by the legislatures, which will make arrival at full Dominion status rapid and inevitable, is a matter of common sense and such safeguards may prove to be the curbstones and fences which prevent the coach of parliamentary government from tumbling into the ditch during its early years.

VI

Moreover, once the primary responsibility for the internal government of India is transferred to the legislatures I do not believe there is going to be much conflict of opinion between Indian Ministers and legislatures on the one hand and Civil Service, Governors, Viceroys and Secretaries of State on the other. At any rate it will be nothing like as direct and difficult as has been in the past—even though, as seems possible Congress has a majority in many of the provinces of India. The history of politics establishes, I think, two central truisms. The first is that the choice before governments in any particular circumstances is usually narrow which is why all parties tend towards the same policy in day-to-day affairs once responsibility is upon them. The second is that governments become unpopular and discredited far more by reason of failures in day-to-day administration than because they fail to carry out their election promises.

The reason why the British Raj has lasted so long and is still regarded by the outside world as having been a success has been because it has succeeded in discharging with reasonable efficiency and tolerance the fundamental function of government. It has established and maintained the political unity of India and has protected the country from external invasion and internal war. It has maintained an honest administration, has sponsored a considerable degree of economic development, especially in transport and irrigation—and has held the balance with reasonable fairness between the communities. Indian opinion will reply that the British Raj has lamentably failed in organising education, in economic and agricultural development, in attacking the poverty of the country or the exploiting vested interests and that Indian interests have often been subordinated to the interests of Great Britain or the privileges of the British in India—Civil Servants and businessmen. Making full allowance for these criticisms, the fact remains that the British Raj, as a system of government, has discharged, and discharged successfully, the vital functions of a government. During the placid Victorian and Edwardian era people all over the world tended to take stable government for granted. It is only since the War, when they have seen how easily government itself has been overthrown in one

country after another to be replaced either by chaos and unutterable sufferings for the mass of the people or by party dictatorships infinitely more brutal or ruthless and intolerant than the liberal autocracy of Britain in India, that the importance of government as the primary necessity of man has become more generally recognised.

The transfer of responsibility from British to Indian hands is being made not because the British Raj, as government, has broken down, but because the ever rapidly growing Indian political classes have demanded, and rightly demanded that Indians should show their qualities of manhood and womanhood by assuming responsibility for their own government, so that the old basis of the Raj, the consent of the governed,—has now largely disappeared, and because India's need to-day is not merely for unity and good government but for political, economic and social reforms which no alien power, but only indigenous political forces, can achieve.

But directly the new constitution comes into full effect the Indian legislatures and the Ministers dependent on them will have to assume primary responsibility for the internal functions hitherto discharged by the British Raj. They will be primarily responsible for maintaining the unity of India and internal law and order. They will have to preserve harmonious relations between the Princes and the Provinces in federal matters. They will have to maintain honest administration and financial stability. They will inevitably exert a great deal of "influence" in the field of defence. And, in addition, province and federation together will have the initiative over the immense area of economic development and social reform. When anything goes awry over this vast internal field, when anybody wants anything done or some wrong righted, he or she will have to go to the Ministers—not to Governors or the Viceroy—for the latter will be bound to say that unless defence or until their special responsibilities are involved they are not responsible. In these circumstances it seems to me, that being confronted by exactly the same necessities and problems as have confronted Governors and Viceroys hitherto—those involved in the maintenance of good government—they will be driven not to conflict, but towards the same practical conclusions, by the facts with which they will have to deal. Governors and the I.C.S. will feel relieved that the primary responsibility for law and order, for dealing with communal problems, for determining delicate matters of social reform, will no longer rest on their shoulders. Ministers and legislatures will be glad that in the background they will have the experience of the Civil Service and the special responsibilities of Governors and Viceroy to assist them in resisting these imperative demands for patronage, unwise expenditure or sectional legislation, which invariably come surging up from an inexperienced electorate stimulated by demagogues in the earlier stages of democratic evolution.

VII

Before the World War the Indian Civil Service, subject to the moderating influence of Governors drawn from England in the

Presidencies and the control of the British Cabinet at home, were the rulers of India. In future their status will be that of the Civil Service at home. I am not sure that the vital part played by the Civil Service in the system of responsible government is always understood in India or elsewhere. The imperative need of it, indeed, is only now becoming recognised in the United States.

In the early days of my political experience before the War the Civil Service in England was the frequent target of attack by labour politicians and left wing radicals, on the ground that it was drawn from a superior social class, was conservative and reactionary and was unsympathetic to the aspirations of the people. Since the advent of the first Labour Government to power in 1924 that complaint—even from the Socialist left-wing—is practically never heard. Why is that so? The reason is that responsibility for government brings home, even to the most extreme politicians, that knowledge of and responsiveness to popular wishes and needs is not, in itself, an adequate equipment. Government, as the greatest of the arts, can no more be successfully practised by the novice than can cooking, driving a locomotive, managing a bank, or growing good crops. The essence of the British Civil Service system is that it places at the disposal of the Ministers who come into power as a result of a popular electoral campaign—a campaign which brings to the surface what the public wants or is made to think it wants—a body of trained administrators with a lifelong experience of the practice of government who are bound both to advise the Minister in the light of that experience and to carry out his decisions whatever they may be after he has heard their advice.

The defect of a pure bureaucracy is that it tends to exalt mere administrative expediency. It may be just, competent and efficient. But it tends to be inhuman in the sense that it does not fit the human hopes and sorrows and desires of the people it controls. It therefore tends towards discontent and in the end to revolution. The defect of a purely democratic system is that it tends to subordinate every law of political economy or administrative experience—even the multiplication table itself—to the necessities of vote catching or the untutored demands of the populace. It therefore tends to bankruptcy, the breakdown of order and the slow paralysis of inefficiency and corruption. The peculiar virtue of the system of responsible government is that it sets out to combine the virtues and correct the defects of each of these two elements. The law of its successful working is twofold. On the one hand power and responsibility rest absolutely in the hands of the ministers. Their decision, whatever it be, prevails. If things go wrong they are responsible and the legislature and the electorate can make them change their policy or turn them out. On the other hand the Civil Servant equipped with education and experience, statutorily protected from the whims or prejudices both of legislature and Ministry, is in a position to advise the Ministry quite fearlessly, about what it proposes to do or to leave undone, but is bound to carry out its decisions whatever they may be, to the utmost

of his ability, because his responsibility is confined to giving advice and not for the policy itself.

I hope that in India this system will come to work very much as it does in England, for it is essential to good and progressive government. At first there may be some Civil Servants who may wish to carry on the traditions of the "twice born," and some Ministers who will resent independent advisers and want mere compliant office boys to serve them. But in the main I believe that the sheer immensity of the problems which will confront the Government, the interest which the Civil Servant will feel in the social reform which Ministers can initiate and he cannot, the interest of the Minister in the problems of administration, the common feeling which grows up between people who are tackling a difficult job in common amid constant irresponsible criticism from outside, will bring them together in India as it has done elsewhere in the Empire. And if that is so, the result will be that India will be immeasurably better governed than it could be in any other way, in the difficult days of the modern changing world.

Why then the meticulous completeness of the statutory safeguards for the Civil Service? Personally I think that some of them are unnecessary. The real safeguard for the Civil Service is going to be the goodwill of Ministers rather than special responsibilities in the hands of over-worked Governors and Viceroys, and some of the safeguards may tend to weaken that greatest of safeguards. None the less experience shows that the Civil Service question has always been one of the most difficult and delicate in the transition to self-government elsewhere in the Empire. The vital importance of an independent, statutorily protected Civil Service to the working of responsible government is often not understood by Ministers when they first come into office. The pressure on legislatures and Ministers to find "jobs" for friends, relations and political supporters, regardless of the efficiency of the public service is almost irresistible unless they can shelter behind statutory rules. There is the natural nationalist desire to see the last of the "foreigner." All these things tend to create misgiving in the Civil Service itself, and confidence both in their own future and that they will be protected so long as they do their duty efficiently, is essential to a good service. I think, therefore, that the solution embodied in the Act—open to criticism as it may be in detail—whereby the Civil Service carry on, with their individual rights protected but their constitutional status and responsibilities transformed, until the new legislatures and ministries have had time to get into the saddle and to learn by experience, before the future method of recruitment and control is reconsidered, is fundamentally sound and in the best interests of India itself.

VIII

Fundamentally, therefore, the speed with which India will reach full responsibility for her own affairs will depend on the character of the new legislatures returned by the electorate and the calibre of the Ministries which they will maintain in power. If the legis-

latures contain stable and sensible majorities, and if they keep in office strong and competent Ministries, nothing can prevent India making rapid progress to full Dominion status, including responsibility for her own defence. But if the electorate returns demagogues, or the legislature break into factious minorities continually bringing Ministries down and making impossible those strong and difficult decisions without which government cannot be carried on, India itself may be grateful for safeguards which may protect it from chaos or Civil War or party dictatorship. As has happened elsewhere it will be Indian public opinion itself which in that event will demand that the reserved powers be put into execution in order to prevent worse things befalling.

At this moment, perhaps because the critics have had the main innings during the last year or so, it is the tendency both in India and England to look too exclusively at the tremendous difficulties which will confront the 35,000,000 electors and the 2,000 members which this electorate and the Princes will return to the legislatures. One hears endlessly of the impossibility of combining democratic provinces and autocratic Indian states into a coherent federal legislature; of the obstacles which separate electorates create in the way of the evolution of true political parties; of the opportunity which communal estrangement, special minority representation and the Princes' vote gives to Viceroys, Governors and the I.C.S. to try to keep power in their own hands by playing off groups and parties against one another; of the threat to law and order and sound finance inherent in largely illiterate and inexperienced electorates liable to have their emotions and ignorance exploited by irresponsible demagogues; of the weakness of a centre which embodies both dyarchy and a practical inability to use dissolution as the method of resolving disputes between the executive and the legislature; of the limitation on nation building caused by the proportion of the national revenues which will be spent by the Viceroy on defence, and his special responsibility for financial stability and credit; of the limiting effect of the Reserve Bank, the Railway Board and the provisions against commercial discrimination (most of them in my view unwise from the British point of view) on the adoption of a comprehensive policy of economic reform, and so on. Personally I do not believe that these laws of strangulation and safeguards will be justified in experience, provided the policy adopted in the legislatures is really constructive.

In any case difficulties of a most formidable order are inherent in any Indian constitution. There is no way of avoiding them. As the Round Table Conferences and the Joint Select Committee found, to attempt to correct one anomaly is only to produce another of even greater magnitude. The constitution in its present form represents the best practicable compromise worked out during five years' continuous negotiation between conflicting interests and ideals in a country more vast and complex than any which has ever attempted to govern itself as a unity on a responsible basis. The best proof that this is so is that no one has succeeded in framing an

alternative which either avoids the anomalies and dangers to which I have referred or has any chance of commanding more general assent.

Moreover India sets out on her new destiny with two immense advantages, as compared with many of the countries whose constitutions have crashed in ruins in the last twenty years. The first is that, as part of the British Empire it is protected from those agonising fears of outside attack or instant involvement in modern intensive war, which has been one of the main causes of financial chaos or the rise of dictatorship elsewhere. The cost of the army in India may seem to be very great. If the world becomes more peaceful and the introduction of responsible government creates a new and more stable basis for internal law and order, it may be possible to reduce it. But the value which India derives from security is beyond price, as almost every other country in the world to-day will testify. The second is that India will start on its road to self-government towards the end of the depression with its finances fundamentally sound. Its budget balances and of its public debt five-sixths is financially reproductive. The most advantageous distribution of financial resources between the Federation and the Provinces—a most vital matter from the point of view of economic development—has still to be made. None the less India will start on its responsible career, poor it is true, but with a financial position which will be the envy of the post-War world.

IX

The real question to-day is whether Indian political parties and organisations, use the new constitution vigorously to give India a better government and put behind them the constitutional struggle, at least until they have tested their power under the new Act, or whether they revert to irresponsible obstruction, inside or outside the legislatures. In my view constitutional co-operation in putting through a constructive programme (perhaps as often in constitutional "opposition" as in office) is the surest—indeed the only—road to communal alleviation, to the solution of the still unsolved problems of the constitution itself, to economic advance, and also the quickest road to full Dominion status. As I have pointed out in an earlier part of this article the fundamental fact embodied in the Act is the decision of Parliament that the primary responsibility for India's affairs shall in future rest in Indian hands. That is a decision following naturally on British history since the beginning of this century and upon the existence of the modern universal electorate at home, and Parliament has not been deflected from it by recent world events. The doubt in Britain has not been as to whether England was willing to let go her control over India and see her become a fully self-governing Dominion, but as to whether India—in her size, complexity and present state of development—was yet able to shoulder successfully the tremendous task of self-government. If India shows the same kind of ability to conduct her own govern-

ment as has been shown by the Dominions, to maintain law and order, reasonably sound finance and to put into effect practical measures of economic and social development, public opinion in England will be as ready to transfer to India the whole responsibility for her defence and to see her take her stand alongside the Dominions, as it has been to witness these developments in Canada or Australia. There will then be no difficulty about further progress. But if there is bad government, improvident finance, irresponsible obstruction and the threatening of breakdown, the safeguards will inevitably move forward towards the centre of the stage.

That is why I think that certain sections of opinion in India are fundamentally wrong in advocating that they should enter the legislatures in order to force the transfer of more power by methods of obstruction—to organise, for instance, an irresponsible opposition at the federal centre in order to force the Viceroy to govern by certification or to reduce the army charge against his better judgment. That may have been an arguable policy so long as initiative and responsibility in fundamental matters rested in official hands, as it did under the Montagu-Chelmsford Reforms. But it seems to me the wrong way to the goal of Dominion Status under the new Act. It would be to follow the policy which has led to the partition of Ireland and the frustration of Irish nationhood instead of the policy which has led smoothly and rapidly both to nationhood and liberty as in the case of Canada, Australia and South Africa.

No doubt the difficulties in the way of getting general agreement between all the entities which will make up the new Indian legislatures as to the broad basis of constructive policy which is to be pursued in India the next five or ten years—through constitutional opposition no less than by responsible office—seems very great. But that is precisely what India has to do in any case if she is to be a self-governing nation of that liberal and democratic type which is certainly the highest standard yet achieved. The success of responsible government everywhere depends far more on the moral courage, the public spirit and the integrity of the politicians than on the terms of the constitution itself. If India sets to work to give India a better government under the new constitution than she has ever had before, she will find no interference from Great Britain. On the contrary the more wisely and tolerantly and vigorously she sets out to master the tremendous problems of her internal life, the more sympathy and affectionate support will she receive from England and the less will the special responsibilities be invoked, the sooner will she be able to shoulder responsibility for her own defence, and the more readily will those changes in the constitution either by growth of “conventions” or by legislation or orders in Council which experience in the practical working of the constitution may show to be necessary, be promptly and easily made. It is quite true that the safeguards are manifold and complete. But when one considers what has happened elsewhere and the far greater inherent complexities with which India has to deal, it is not unreasonable, in the best interests of India, that ample safeguards against serious breakdown should

figure in the constitution itself. The surest way of ensuring their desuetude or, if that proves unnecessary, their modification, is to prove in practice that Indian parties and electorates can return men and women to power who are competent to assume responsibility for the good government of their country.

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