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THE NEW CONSTITUTION AND AFTER

The Rt. Hon'ble
V. S. Srinivasa Sastri Endowment Lectures,
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BY

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PREFACE

The Srinivasa Sastri Lectures were delivered at Madras in February and March this year and are now published without substantial changes. I have dealt with the Constitution up to 1938, and have not discussed the events of 1939-'41. The provincial Constitution was suspended in October 1939, in seven provinces of British India, at a time when the Federal Constitution had not yet been inaugurated. The Muslim League adopted the principle of Pakistan at its Lahore Session in March, 1940, and it became not merely the creed, but the manual of action of the League at its Madras Session, in April this year. The new scheme of the Viceroy's Expanded Executive Council was published in July, this year, and immediate effect was given to it.

This bare recital of events shows clearly the fundamental change which events during the last two years have wrought in India. The lectures are, therefore, purely academic in their spirit and treatment, and I have scrupulously avoided reference to controversies which have unfortunately rent India in twain. I have tried to function merely as a *rapporteur*, and have contented myself with elucidating the provisions of the Act, and explaining the viewpoint of the various interests affected thereby.

The Constitution Act of 1935 is dead, and the new Constitution that will be devised will have to take into account the insistent demand of the Muslim community for the security of its position in India, no less than the keen desire of India for Dominion Status of the Westminster variety, which should be conceded within a definite time. Finally there is the offer of the Viceroy of August 8, 1940, and the speech of Mr. Amery on April, 22, this year. This dry recital of chief events will show how rapidly the political situation has changed in India.

In the First Part, I have confined myself to the exposition of the Act of 1935. In Part II, I have dealt, very briefly, with my conclusions, which, it must be noted, are tentative, and are merely summaries of arguments for and against particular proposals.

27, Elgin Road,
Allahabad,
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SHAFAAT AHMAD KHAN

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THE NEW CONSTITUTION AND AFTER

PART I

1. How Constitutions are Framed

I owe an apology to this distinguished audience for the ambitious title of these lectures. The Indian Constitution is a veritable jig-saw puzzle, and those who have had opportunities of discussing its various aspects know how appallingly difficult is the process. It may, indeed, be compared to a clock with separate actions for hours, minutes, seconds, and the revolutions of the moons and planets. All the complicated interests of parties in British India, Princes and communities, the position of provinces as such, and the relation of the centre to the units, etc., have to be most carefully considered and assessed. Even when we have taken all these factors fully into account,—and this is so difficult an undertaking that no person can do it satisfactorily in spite of an infinite amount of precautions—it is by no means certain that the Constitution will be acceptable to powerful sections and interests in a country like India. Abbe Sieyes, in his halcyon days and when fortune smiled upon him and his fancy projects, manufactured constitutions that were lively, graceful, made of nothing, like those transparent gauzes which the ancients called woven air. Such embroidery work is fragile, and once it is subjected to the powerful effect of the passions and characters of living men with their hereditary prejudices and vaulting ambitions it crumbles into dust. People who devise constitutions, with the facility of Abbe Sieyes, believe that they can be made at will, and the state is something plastic, capable of taking the complexion and the form impressed upon it by jurists and speculative politicians. An extreme example of this is to be found in the numerous experiments in constitution-making which small and large towns of Italy conducted in the fifteenth century. The ancient Greeks went to the other extreme. The Greek city grew up under the benign care of a local deity, whose blood had been transmitted through many generations to the chief families of the ancient city

states. The city was a divinely-founded and divinely-directed organism, completely independent of foreign sanctions, insulated and isolated from the rest of the world, and enclosed within the circuit of civic pride and independence.

2. Limitations of the Scope of these Lectures Emphasised

The task of framing a constitution for a sub-continent, in which the different elements have not yet been fused into a unity, is one of supreme difficulty. I feel that I am the least qualified to give even hints on such a subject, and my only excuse is that I have tried to study its implications not so much from the view of a detached observer (I cannot claim that exquisite and polished aloofness which is the essence of an objective study) as from the point of view of one who has taken an extremely humble part in some of the complicated processes which are inevitable in the establishment even of a municipal board. The views expressed here are entirely my own, and they are based exclusively on published documents. I have aimed at a realistic treatment of the subject, and have tried to limit myself to what I deem to be feasible and practicable. I have tried to establish myself beneath the sunlight of an Indian sky, and, realising my own limitations, I have deliberately limited myself to the consideration of a frame of government that can be applied, in the present circumstances. I am afraid it is narrow, parochial and crabbed, and is not likely to appeal to the youthful enthusiast, or the political doctrinaire. My aim is an extremely limited one, and I feel that I ought to make it clear at the outset to prevent misunderstanding of the scope of this series. It is simply to restate certain problems which present themselves both to the initiated and the inexperienced in the study of India's constitutional progress. I have contented myself in this, as well as in the second Lecture, with an analysis of the main problems of the Indian constitution, and have refrained from projecting my personal views into discussions of these problems. My function in this, as in the second lecture, is that of a *rapporteur,* who contents himself with the elucidation of points for and against a particular proposition, on the basis of the material presented to him, and scrupulously refrains from formulating his personal views. Hence I should not be identified with the arguments that have been discussed in this

series, whether in support or in refutation of any political creed. They have been used on various occasions by accredited exponents of these views, and if I have not mentioned their names or quoted their source, this has been done solely with a view to avoid encumbering this lecture with a plethora of authorities, which will merely perplex and bewilder the reader. Finally, I have aimed at keeping myself clear of current political controversies. This is a purely academic lecture, and cannot deal with contemporary problems that have aroused controversy and debate. I should like to make it quite clear that I have not discussed directly or indirectly, recent changes in the political creed of the Muslim League or the Congress, and have scrupulously avoided discussion of problems which the recent resolutions of these two bodies have raised. My survey of the constitution and proposals for its improvement refer to the constitution as it was worked till 1938, and I have not gone beyond this date in the discussion of Indian politics, as the subject bristles with difficulties, and has evoked a passionate and embittered discussion. The literature on the subject has assumed serious proportions. Leaving aside the debates on constitutional reforms in the Central and Provincial Legislatures since 1921, the volume and range of reports of Committees and Commissions, which started with the Reforms Enquiry Committee of 1924 and ended, temporarily let us hope, with the speech of Mr. Amery in the House of Commons on April 22, this year, is so large that it will require several months of intensive study by an average reader to wade through it. For these reasons, I have deemed it advisable to refrain from quoting references. Again, as the Government of India Act of 1935 has been used simply as a basis for discussion, I should not be regarded as an enthusiastic supporter of every section of the Act, as I feel that it is disfigured by a plethora of safeguards which has made it futile and ineffective. I have, however, studiously refrained from importing my personal views into the discussion of these problems, and have tried to keep discussion on the plane of an objective analysis of the important issues which face India to-day. Even the politician who is still on the stage and has not shut himself up in his semi-retreat and has not merely the heat of his ambition but also the fire of it in his speech, must heave a sigh of relief at the unique opportunities of a tranquil and calm reflection of political controversies, which such an endowment affords.

Finally, I may be allowed to say that the endowment is an impressive expression of our respect for a man of whom India is legitimately proud, in whom nobility of character and brilliant intellectual endowments have blended so gracefully.

3. The Meaning of the Constitution

Having cleared the ground with these preliminary remarks, let me now address myself to the subject matter of this lecture. It is an humble attempt to restate the main problems which have been the subject of long and vigorous debates, and have occupied the head, heart and mind of India during the last quarter of a century, and to assess their value in the light of the present day experience. I will try to avoid current political controversy, but in the discussion of certain subjects which affect, directly or indirectly, every human being in India, it is possible that I may be involved in the tangled skein of a political discussion. I crave pardon for it, in advance, as I know, from experience, how difficult it is in India, or, for the matter of that, in any other country, to keep to the frigid level of a mathematical proposition, problems, which deal with the incalculable element of human motives and human needs. I do not think I need go into an abstruse discussion of the meaning of a constitution. The definitions of 'constitution' are legion and numerous writers have defined it in a variety of ways. The state, according to a recent writer, is a human grouping in which there is a certain power-relationship between its individual and associated elements. This relationship is embodied in political institutions. The system of fundamental political institutions is the constitution. This is a studiously vague definition, for the substance and form of the constitution are left out, but it will serve our purpose. A constitution is not, however, framed for the inner consciousness of a single individual nor is it the product of "pure reason," expressing itself with the precision and directness of a mathematical formula. Every constitution is framed in response to, and is the product of, the economic and spiritual needs of its time. If it is the product of an earlier time, such as the British Constitution, it may be so overlaid with conventions, usages and practices that it may become almost unrecognisable to those who study it at first hand. On the other hand, if it lays down certain

abstract propositions, to be applied in a possible or impossible future, it will either remain inoperative to that extent, or it will provide recurring cause of friction among the different elements of the state. The Weimar Constitution of Germany, and the post-war constitutions of Eastern Europe, framed in and after 1919, are apt illustrations of the latter.

4. Real Test of a Constitution is its Workability

I have said above that the constitution of a country should be responsive to the needs of the nation. There are, however, one or two other aspects of this problem which I should like to emphasise here. In the first place, the real worth and value of a constitution must be tested in its actual working. A constitution is not a work of art, showing the symmetry, grace and precision of a Greek statue. It is the product of infinite experience and infinite compromise, and both should be continuously active in the process, and continuously conciliatory. Dr. Hugo Preusz could, no doubt, expound his propositions for the Weimar Constitution of Germany in 1919 at formidable length in his long and learned speeches, while Sieyes could manufacture constitutions to order, of every variety and pattern and of all stripes. But the constitutions framed by these two modern Solons crumbled away into dust with the first fresh breath of experience, and paved the way for ruthless dictatorships. The real test of a constitution is simply this,—Will it work? Will it be able to stand the rough and tear, not only of daily existence, but also of abnormal situations, maintaining that delicate equipoise between the executive and legislature, which ensures its stability and guarantees its incorruptible efficacy? The experience of its working must not be limited to a few years, but extend over several generations, and even then it may be difficult to decide whether a constitution will survive rough weather. A long and bloody civil war was needed in the United States of America for the preservation of its Federation. Again it is well-known that the framers of the constitution cannot foresee or visualise its real value, or forecast the ultimate shape which it will assume. Not one of the framers of the American constitution imagined the extraordinary rise of political parties to power in the United States of America. Moreover, a constitution needs time to settle into its environment,

while the environment itself must also take it to its bosom. This requires time and experience. Finally, and most important of all, it is the character and the capacity of a people that determine the success or failure of a constitution. As Benjamin Disraeli put it, "A political institution is a machine; the motive power is the national character. With that it rests whether the machine will benefit the society, or destroy it." A nation, or a people, will mould the constitution in accordance with its spiritual and economic needs, and if a constitution is not sensitive to its real desires, it must be readjusted to suit its stable requirements, or it will be scrapped altogether. One has only to look to the bizarre way in which many South American Republics have worked their constitutions to realise the gap that yawns between the theory and practice of their constitutions. Similarly, the experience of U.S.A. shows clearly how the genius of a race, and the spiritual ideals and economic needs of a people, have shaped the constitution of the country, and made it a symmetrical means of the national development. On paper, and in theory, the constitutions of many of the South American States conform to the most advanced democratic institutions, and are the clearest expression of democratic thought. However, in their actual working, most of these constitutions have been perverted, and armed dictatorships are the order of the day. They are without the pride of ancestry, or the hope of posterity. I may conclude this part of my lecture by quoting a wise saying of David Hume, the philosopher, who has analysed the problem of constitution-making in his essay on the Rise of Art and Science with great clarity. "To balance a large state or society, whether monarchical or republican, on general laws, is a work of so great difficulty that no human genius, however comprehensive, is able, merely by dint of reason and reflection, to effect it. The judgments of many must unite in the work. Experience must guide their labour; time must bring it to prefection; and the feeling of inconveniences must correct the mistakes into which they inevitably fall in their first trials and experiments."

5. It is difficult to forecast what shape the Constitution will ultimately assume

Having tried to explain the meaning of the constitution, let us now deal with the specific problem with which we are now

concerned. The difficulties of the task which face even the most experienced and the ablest person, in devising a suitable constitution for India are enormous, and my object in this, as in the following lecture, will be to analyse these problems, and to put before this distinguished gathering their implications. I do not attempt—no single individual, however exalted, could attempt—a solution even of one of the numerous problems which have been insistently demanding attention. It is a trite saying that at the commencement of the Union of American States, its creators did not know exactly what they had framed. A constitution changes its spirit and nature, in course of time, and it is only the environment, the human spirit, the economic needs, and the mutual relations of the institutions created by the constitution that evoke its meaning. A single elastic, innocent-looking, but far-reaching formula may undermine its entire structure. The following very ingenious comparison was made by St. Augustine. Supposing that a single syllable of the poem of the *Iliad* were for a moment endowed with life and soul. Could this syllable, placed as it is, understand the meaning and general plan of the poem ? At the most it might understand the meaning of the line of which it forms part, and of the three or four preceding lines. This syllable endowed for a moment with life, is man ; and we can imagine the difficulty which he will experience in comprehending the totality of needs of hundreds of races, communities and interests in a sub-continent of four hundred millions. The distinction between history and politics is clear and precise. History produces an illusion which makes one think it governed reason. The historian's duty is to recount and describe the malady when the patient is dead. The statesman takes upon himself to treat the still living patient. We are, therefore, dealing with the living patient, who has been suffering from a complication of disorders.

6. Units and Centre in a Federal Constitution

On what basis should India's constitution be framed? Should it take into account the infinite variety of her population and territories, the social, economic and religious differences which are alike a source of strength and weakness to our land? Or, should it be the logical development of a comprehensive principle exhibit-

ing in its clarity, simplicity, and vigour the triumph of pure dialectic over variegated experience? I shall be pardoned for saying that constitutions are not based on Hegelian dialectics, though Hegel also propounded his philosophy of Rights, which, however, was a logical development of his Metaphysics.

Constitutions are founded essentially on experience, and made by men, who have a varied experience of men and things, and are in a position to select the best material from the heterogeneous mass produced before them. In a federal constitution, there is incessant struggle of units for supremacy or bare existence on the one hand, and the equally keen desire on the part of the Centre for supremacy, on the other hand. Hence there is the never-ending clash of two diametrically opposed principles within a Federation, which sometimes acquire separate personalities. Now the essential characteristic of India is diversity, controlled and harmonised by her culture and religion. It is to the variety of conditions offered by different parts of India that we owe the unexampled richness of her cultural and mental life. On the other hand, it must be admitted that the diversities which stimulate her spiritual energy are a fatal source of her national instability.

7. Federalism the only solution of India's Political Problem

Should the constitution be federal or unitary? I do not think I can discuss this issue at length as India has been discussing the different forms of government for at least ten years. Many important authors are of the opinion that federalism is the method of *laissez-aller,* in politics and the theory of *laissez-faire* in economics. The disadvantages of a federal government are obvious and have been discussed at length by authorities on the subject. I cannot enter into a detailed discussion of this topic. But I may summarise the disadvantages of a federal form of government, by saying, that, in this form, there is weakness in the conduct of foreign affairs, and weakness in the home government, owing to the limited authority of the federal government over the units of the federation and individual citizens. Again, there is the liability to secession or dissolution or rebellion on the part of component states. It is true, of course, that in a federation, as distinguished from a confederation, secession is never permitted, and a federal union is

indissoluble and perpetual. The fact, however, remains that in a body composed of diverse elements, inspired by varying ideals and ideas, organic unity is lacking, and this reacts on the efficiency of the administrative machinery no less than on its foreign policy, and internal peace. Another danger to be guarded against is the segmentation of the state, and its division into groups and factions by the organisation of sectional groupings among component states, based either on unity of economic interests, or spiritual aims. "Caves" are sometimes formed, and they tend to group themselves on principles which detract from the solidarity and unity of the federation. Again, there is a want of uniformity among the units, in legislation and administration. This is a serious drawback and some units may remain hopelessly backward in social legislation, while others may show a high level of efficiency in the material needs and cultural standards of the age. A comparison of the standard of New England states with that of some of the western and southern states of the United States of America will show the gap that yawns in the efficiency-levels of these units. Finally, there is considerable expense and delay in a federal system, owing to the intricacy and complexity of its double system of legislation and administration. These are serious defects, and it must be confessed that if one were writing on a clean slate, in a country distinguished for its uniformity of race and creed and manageable in size, a unitary system would be more efficient, as it is endowed with a vigour and energy of which few federal systems are capable. The perversion of the unitary state is, however, the Nazi state, in which not only state rights, but also individual rights are swallowed up by Moloch. The state is transformed into a gigantic pitiless engine, which destroys every pattern of individual and provincial life.

Having discussed the disadvantages of federation, let me now discuss its advantages. Federation is the only means whereby states can be combined in one administration and one government, without extinguishing their separate administrations, legislatures and local governments. Again, federalism alone furnishes a unique system of co-ordination of the centripetal and centrifugal forces which have their root in the history, culture, religious sentiments and economic needs of the component elements of the federation. Then, federalism prevents the rise of an authoritarian government, which is a negation of parliamentary system, and

dries up the springs of initiative and self-reliance. Again, federalism trains people in the art of self-government in state legislatures and gives the people an opportunity of educating themselves in their civic duties. The greater the power, which a federal constitution confers on the units, which compose the federation, be they large or small, and the less the power given to the federation as a whole and to the federal centre, so much the fuller will be provincial patriotism, and so much the greater the energy of the individuals who compose the federation. Again, federalism enables people to work experiments in legislation and administration in different units without risk to the federal centre. Moreover, federalism localises mal-administration, which could stop at the frontier without contaminating the whole area of the federation. Finally, federation relieves the national legislature of a large burden of legislation, and enables it to legislate, after mature consideration and deliberation, as the national council of the people as a whole.

8. Theories of Federation

The literature on federalism is enormous, but it does not strictly fall within my purview and I have not, therefore, attempted to discuss it here at length. I may, however, be permitted to give a brief sketch of two or three leading theorists on federalism. I must confess that speculations propounded by jurists have produced little practical effect on the actual process of constitution-making, and the only example in modern times is that of Dr. Hugo Preusz, who may legitimately be regarded as the father of the Weimar Constitution of 1919. In England, Lord Bryce and Dicey have developed a conception of federalism which has produced a powerful effect on contemporary English thought, while the recent theories of Mr. Laski and G. D. H. Cole have given a specific mould to the English school of political science. I would have liked to discuss these theories in detail, but the time at my disposal is limited, and I must content myself with, I am afraid, a jejune and incomplete analysis. I am forced, however, to add that theories and principles, without institutions, are constitutionally useless, and I do not remember, in the course of numerous discussions on many constitutional problems, any reference being made to any abstract theory of federalism by any jurist. It must, however, be confessed that they are of some use, as they enable us to think out some of these

problems in their abstract form. I cannot discuss at this stage the recent totalitarian theories of state which have produced such a terrible effect on humanity at the present day. Mussolini declared that "the apex of the Fascist doctrine is the concept of the state, of its essence, of its tasks, of its aims. For Fascism the State is an Absolute in regard to which individuals and groups are relative." Here lies the fundamental distinction between totalitarian states and the principle of ordered freedom which has been a source of inspiration in all English speaking countries. For Fascism the state is an Absolute. Mussolini took this noxious doctrine from Sorel, while the latter based it upon Marx and Engels. The fountain head, both of the Nazi and the Communist states, is Hegel, who stated in his *Philosophy of History,* that the state is a working model of the Absolute, an embodiment of the "Idea," that is to say, of the Reality behind phenomenon. Hence, persons who live in the Absolute have as much or as little right to independent existence as the cells of the human body, "as the state is the Divine Idea as it exists on earth." Hegel goes further and asserts that the "state is an end in itself. It is the ultimate end which has the highest right against the individuals, whose duty it is to be a member of the state." Hegel is the father of the two doctrines—Nazism and Communism—which have destroyed human personality, and reduced its citizens to machines. The great Spanish publicist Don Salvador de Madriaga has aptly summed up the difference between Fascism and Communism, "Fascism is but the image of Communism on the waters of fear."

9. Calhoun

Calhoun occupies an important place in the development of federal theory, and his theories are of special importance to India at a time when the perennial question of the relation of centre to the units is being discussed with renewed vigour. He came, appropriately enough, from the southern states of U.S.A., and summarised in his writings the hopes and fears, the ambitions and frustrations of the southern states. Calhoun's *Dissertation on Government* contains probably the ablest defence by the southern states of America of their resistance to the claims of the North. He admits that government is

necessary to man to prevent anarchy. Hence an "organism," or constitution, must be found which, "by its own internal structure, will combat the tendency to abuse of power." This, he says, is normally established by the establishment of the majority principle. He denies that the principle of majority is adequate, as men's interests are not identical and the majority principle does not allow of the due expression of individual, group and local diversities. Parts of a country are not equal; the larger the territory under a single government, the more varied its parts, and the greater the need for a constitution which gives each of the parts a veto upon actions affecting its vital concerns. Hence no ordinary majority system will suffice, but a "concurrent" majority is needed, and in the end "nullification" and secession. Calhoun asserts that it is no use relying upon the terms of a written constitution without such safeguards, for the majority can always interpret the terms as they will. He developed this theme further, and in his *Discourse on the Constitution and Government of the United States* denied that a single government including all states existed, and stated that the several governments were co-ordinate governments, properly immune, as sovereigns, from a suit before the Supreme Court. The real reason for these revolutionary doctrines was the passionate desire of the south to preserve its civilisation against northern attacks. This desire is vividly expressed in the brilliant novel, *Gone with the Wind*, by Margaret Mitchell. Lincoln's reply to this was decisive. In his notable Inaugural Address, he clinched the issue by stating that "if a minority in such a case will secede rather than acquiesce, they make a precedent, which in turn will divide and ruin them; for a minority of their own will secede from them whenever a majority refuses to be controlled by such minority. Plainly the central idea of secession is the essence of anarchy." "Unanimity is impossible; the rule of a minority, as a permanent arrangement, is wholly inadmissible; so that, rejecting the majority principle, anarchy or despotism, in some form, is all that is left. Physically speaking, we cannot separate. We cannot remove our respective sections from each other, nor build an impassable wall between them. They cannot but remain face to face and intercourse, either amiable or hostile, must continue between them. Is it possible, then, to make that intercourse more advantageous or more satisfactory after separation than before? Can aliens make treaties easier than friends can make laws? Can treaties be more

faithfully observed between aliens than laws among friends? Suppose you go to war, you cannot fight always, and when, after much loss on both sides and no gain on either, you cease fighting, the identical old questions as to terms of intercourse are again upon you." I have, I am afraid, given an unnecessarily long extract from Lincoln's address. I feel, however, that the controversy, which led to the Civil War in the United States of America, dealt with a problem which is a recurring cause of friction between the units and the federation. It is clear to us, now, after an experience of the working of this system that Calhoun had in mind a confederation, and not a federation, and he mixed up the two systems in his desire to defend the case of southern states. No federation can tolerate secession at the will and wish of its component states, and if Lincoln had conceded the claims of southern states, America would have been involved in an internecine war among twenty independent states, and would soon have relapsed into the position of Mexico or Cuba. It is the essence of a federation that it should be perpetual and indissoluble. A confederation is a mosaic state and falls to pieces, at the slightest opposition. Lincoln's view had a compelling spiritual influence upon his generation, and the Industrial Revolution in the U.S.A., which coincided with the Civil War, knit up the units and the federation and firmly established federal supremacy. The tendency has not yet weakened, and the states have suffered serious inroads upon their powers.

10. German Theories of Federalism

I will conclude the sketch of federal theories by referring to German jurists, who have dealt with the subject. Many German political theories are coloured by a profound metaphysical bias, and their juristic theories take little account of concrete data. They were made without the observation of actual governments by jurists who emphasised one or two aspects of their subject and sought a solution of their difficulties in terms of sovereignty. It must be added that some of them were biassed, either consciously or unconsciously, by State or Federal sympathies. Bavaria offered the most stubborn resistance to absorption in the new German Reich, and this was due to the fact that Bavaria, for nearly two hundred years, was invariably allied with France against the domination of the Hapsburg and later on, of the Hohenzollern dynasty.

The Bavarian school of jurists was powerfully influenced by these traditions, and many drew their inspiration from Calhoun. Discussions by most of the German jurists revolve round the distinction between the *Staatenbund* (Confederation) and the *Bundesstaat* (Federation). The former implies a system, which can be dissolved by the assent of individual members; while in a federation destruction of the alliance between the centre and its units is impossible. The confederal state has limited scope and validity; while the federal state is vested with an assured method of increasing its own scope of power, called *Kompetenz.*

11. Von Seydel

The most brilliant exponent of the Bavarian school of federalism was Von Seydel, who was influenced by the theories of Calhoun, and founded a vigorous school of German jurists. Seydel declared that sovereignty could not be divided, and asserted that it lay in the individual states. Such a sovereignty implied a system of states, a confederacy, which, he stated, implies secession. "Sovereignty may not come up against any frontier within the field which it rules where an equal may cry halt. As it is not completely sovereign, it is no longer *the* sovereign." Seydel stated that Switzerland, the United States of America and Germany were confederations, founded on compacts which had not affected the sovereignty of individual states. Seydel's simile may be quoted here, "The proposition that a number of states as such continue to exist, yet at the same time can constitute a new state, sounds exactly like the proposition that if one binds twenty-five sticks together, a twenty-sixth comes into existence. Only a bundle of sticks are obtained; not a stick". I need not discuss here the theories of sovereignty which were propounded by jurists who came after Seydel, as this will take me too far afield. All that need be said here is that Seydel's theories were the starting point of a number of important works in Germany.

12. Jellinek

I cannot deal with this subject at length, as the literature on the subject is enormous, and will content myself with two

representative jurists. Laband and Jellinek regarded sovereignty as one and indivisible, though they asserted that the conception of sovereignty was not essential to the discussion of federalism. Laband states that, in a federal state, sovereignty lies with the federation; and in the German *Reich*, the supremacy of the Reich over the states was clear. Its competence could be increased. It is true that the states were supreme in their sphere; but the sphere had its limits. George Jellinek's important work was published in 1882. It was a brilliant exposition of the theory of the union of states in Germany and deeply influenced German political thought. The starting point for his theory of the state is to be found in the phrase that "the state formulated by legal philosophy is not a concrete actual state, but an abstract state which has yet to come to realisation." He declared that the ideal is a standard never to be entirely realised, which need not be coincident with reality, and the positive might deviate from the rules applicable to the model state. He assumed that many theories of state sovereignty were simply speculations, which imposed positive checks on state authority. The state was only known "through the organs" in which, and through which, it maintained its existence. Hence, he declared that " the activity of the state organ is the activity of the state itself." He argued that the definition of sovereignty, prevalent since the seventeenth century, was incomplete, since it was a merely negative one, which did not explain the legal content of sovereignty, and the manner in which its supreme *potestas* was expressed. Again, a definition of sovereignty as a unity of state powers or as a unity of the state supreme rights was extremely vague, because it told us nothing of the nature of this unity. He laid down the proposition that obligation solely to its own will is the juristic characteristic of the sovereign state, and expressed the positivist conception of sovereignty as the quality of the state by virtue of which the state can be legally bound by its own will. Jellinek based the juristic theory of federalism on the fudamental quality of sovereignty and the nature of the state. He asserted that the main problem of federalism was the relationship of authority between the collective and the individual state. He defined a federal state as a state in which the sovereign authority constitutionally distributes the totality of the functions exercisable within its scope, so that it only reserves to itself a specified quantity for direct exercise, and leaves the rest to

be exercised without control over the establishment of the ruling principles and the ways and means of their actual existence, so long as the constitutional limits are not infringed by non-sovereign member states. The latter are created by an independent state authority by means of constitutional assignment of powers.

13. Gierke

I may conclude this survey of German juristic theories by referring to Gierke's theory, which, briefly put, asserts that there is a real personality composed of individuals and groups in fellowship, in corporations, in the state, in composite states, and in the world of states. The quality of that personality is the supreme compelling agency. Hence supreme power is vested neither in the federation nor in the member states, in isolation, but the federation and the individual states in organic association. Gierke's principle that sovereignty lies in the federal arrangement, or, in other words, the constitution, is intrinsically sound, and approximates to the true conception of federalism. The legal character of the new state is contained in the constitution, which puts both the units and the centre under permanent, but alterable obligations.

I cannot discuss the progress of federalism among English jurists as this will take me farther from my proper theme. All that need be said here is that the rich experience and mature wisdom of Bryce have moulded the thought of many a practical legislator. The new school of political scientists, however, deals with the basic problem of sovereignty from an entirely different angle. The unprecedented expansion of government activity has produced a violent reaction against "monism", a single, central, coercive governing institution, which has found its fullest incarnation in Nazism and Fascism. Safeguards for minorities are analytically examined. The sanctity of the majority principle is being undermined, and the theory of toleration, which had hitherto been restricted to religion, is now extended to include equality of conscience in its most comprehensive sense, and includes toleration for minorities of religion, special interests and race. In England, Laski and Maitland developed theories of sovereignty which have deeply influenced political theory. The Austinian conception, dominant at the time, has been considerably modified and

it has come to be realised that, in the actual modern conditions of social life, there are a series of associations of varying importance, claiming allegiance and loyalty, and sovereignty may exist in the entire arrangement of interrelated groups.

14. Laski

Another school emphasises the fact that it is not sovereignty, but other characteristics, which are indispensably requisite to statehood. Laski states that the ultimate aim of the state is to find out how to bring the satisfaction of the desire of individuals, as well as of groups, into complete harmony with the desire of the state as a whole. To him "the group is real in the same sense as the state is real. The structure of social organisation must be federal if it is to be adequate. Its pattern involves, not myself and the state, my groups and the state, but all these and their inter-relationship." He condemns the Austinian theory of sovereignty. Laski is a pluralist, who stands side by side with the Marxists, and his opposition to the absolute notion of sovereignty is due chiefly to the fact that the new movement for self-government finds its main impulse in the attempt to disperse the sovereign power, because it is realised that where administrative organisation is made responsive to the actual association of men, there is greater chance not merely of efficiency but freedom also. His ideal is a society in which men are given an equal opportunity of self-realisation. As Duguit put forward social solidarity as a substitute for Bodin's conception of sovereignty, Laski urges natural rights as the foundation of state action in the modern world. Laski entirely agrees with Maitland that it is clear enough that unless we treat the personality of our group as real, and apply the fact of that reality throughout the whole realm of law, what we call justice will in truth be no more than a chaotic and illogical muddle.

15. Guild Socialism

I may conclude this survey by referring to Guild Socialism, which is the product of two streams of thought, socialist and democratic. The curious blend of these two ideas results in a state in which there is at once rigorous and precise communal control of production and distribution, and yet extensive self-determination.

Guild Socialism subjects the existing system of territorial representation to withering criticism and shows that psychologically the representation of one person's will by another is impossible. The will is too subtle in its innumerable components to permit of representation. The will of a single person may show infinite gradations and variety at different periods, and in this psychological analysis of the will, Rousseau, Sidney Webb and Cole seem to concur. Hence the programmes of political parties are entirely superficial, and are as empty as they are extensive. The electors must necessarily be ignorant of many of the issues which are formulated and discussed by a central organisation and the central parliament cannot help treating them uniformly instead of diversely. In territorial constituencies there is no real community of feeling or will, for though people live in the same locality, they may have entirely different outlook, sentiments and traditions. There is no unity in such a constituency which will bind the incongruous and hostile elements together. The remedy lies in admitting the diversity of interests and accepting the grouping of citizens as producers and consumers, and placing each of these classes in a number of separate groups. In these groups will be vested the original power of self-determination in regard to all things which concern it alone as a guild, and then can be evolved a plan for the settlement of inter-guild and inter-sectional co-operation. Guild Socialists assert with sublime optimism that this system gives to smaller groups the right of judgment and decision and will be founded on the unity, knowledge and intensity of interest that is possible only in an occupational group, where the objects are restricted and the mind continuously concerned. The objections to the theory are overwhelming. It does not proceed from the integration of the community, and then temper this with the representation of differences, but it proceeds at once from the postulate of disintegration into a larger number of almost rigid communities, whose integration is thence-forward to be achieved. This seems, to my mind, to be putting the cart before the horse. It has taken nearly five hundred years to develop the conception of State. Its first use was made by Machiavelli in *the Prince*, in 1513. The Greeks did not know it and Aristotle's *Politics* took the *Polis*, or City State, for granted. It was not till the Italians applied the term to States that the nomenclature gained currency. Is it worth while

giving up the highly organised and efficiently administered machinery of the modern state and splitting it up into atoms, with a view ultimately to its reconstitution on a semi-voluntary basis? Will not group organisations tend to be dominated by purely selfish, narrow, and sectional prejudices and interests, in which the common good will be ignored, and special interests will mould the feelings of each group? Economic Councils have proved a failure in many countries, and have functioned only perfunctorily in a few places, while fierce collisions have occurred in the adjustment of sectional interests. A Guild Congress, if summoned, will end in turbulent confusion and will show palpable commercial cynicism. It will have no ideals to inspire its proceedings, and no capacity for self-sacrifice. The sole desire of its component groups will be to aggrandise its own group at the expense of other interests, and break up the state into fragments. Guild Socialists have completely reversed the process of the evolution of the state, and, instead of integrating the state and imparting to it the element of vigour and solidity, they have decomposed it. When it has been shattered into a thousand fragments, they take the pieces out of the cupboard, dust them clean, and make out of it a curious compound, which they call a state. It is not a state, but a union of consumers and producers. There is, however, an element of truth in this theory. It aims at rectifying the evils of an exclusively territorial representation, and tempers it by the representation of special interests. This is its most brilliant conception, and is worth serious consideration by us.

A survey of the theories discussed above brings out the important fact that many jurists and political scientists mentioned above have produced little effect on the actual process of constitution-making. The German jurists were deeply influenced by German metaphysics, and German philosophers were formerly in the habit of rounding up their systems of philosophy by adding a volume on the Philosophy of Rights. It is well known that Hegel produced a deep impression not only on juristic, but also on economic theories. It must, however, be admitted that theories of jurists and political scientists, as such, have little or no influence on the actual process of constitution-making. They may have unconsciously influenced the direction and trend of a specific policy in political discussions; they were not, however, deliberately stated either in support or

refutation of any important argument on a question of practical importance.

16. Why Federation was Supported

There is one thing that emerges clearly from the perusal of the voluminous mass of material on the subject. It is this. Indian conditions are so peculiar and distinctive that it is futile to base her constitution completely on one pattern, and make it an exact replica of the English constitution. Even so, certain broad principles must be taken for granted, otherwise agreement on any point would be impossible. Without some measure of agreement on fundamental issues, such as parliamentary form of government, no contact is possible. The English parliamentary system was regarded as an ideal to which the Indian constitution should conform, and the responsibility of the Ministers to legislatures, was consequently regarded as axiomatic. There were, of course, special powers of Governors and Governor-General, but it was generally felt that they would not ordinarily impinge upon the power of Ministers. On Federation, too, there was almost general agreement. It was, indeed, acknowledged, by every important element, that the only solution of the Indian problem lay in the federal system, for therein alone is it possible to reconcile the insistent desire of provinces, minorities and special interests for freedom, with the over-riding necessity of a strong, central government which will centralise the national forces of India and at the same time give free play to provincial energies, and provincial patriotism. The federal solution is, in my humble opinion, the only effective solution of those problems of appalling complexity which have seriously disturbed her calm and retarded her progress. It is true that the Federation actually embodied in the Act does not fulfil the expectations of some of its ardent champions. What should be the nature of a federal union ? What relationship should subsist between the union and its units ? A reply to these questions was given by Chief Justice Chase, who summed up the effects of the Civil War in the United States of America in these words, "The constitution in all its provisions looks to an indestructible union, composed of indestructible parts".

The Indian Federation was supported for many reasons. An influential school of thought represented by the "autonomists" insist-

ed on substantial autonomy for the units of the Federation, as they felt that provincial autonomy in the fullest sense of the term could not be realised without it.

Freedom of Indian Provinces is impossible without a federation and many feel that India's geographical position, the infinite diversity of her creeds and races, and the impossibility of moulding a huge sub-continent in the pattern of a totalitarian state, rendered Federation not merely feasible, but imperative. Vaguely their minds and feelings reached out to one another, to form the integument of a new fellowship. I may be allowed to quote two sentences from my work on the *Indian Federation*. "The autonomists were joined by some members of the State delegations who were anxious to restrict the control of the Federal Government within the narrowest possible limits. It would have been impossible to realise the Federal scheme and give it flesh and blood if various forces had not converged on a central issue from different motives." The "idealists" wanted Federation because without it British India and Indian India could not reach their moral stature of constitutional unity. The autonomists desired it because provincial autonomy in a unitary state is a contradiction in terms; while some of the champions of states' rights supported it as giving, for the first time in the history of modern India, ample scope for mutual deliberation and consultation on questions of common interest. The phenomenon was not confined to a single state or province. Federation revealed a new necessity in the constitution of New India. Penned in within the narrow limits of their territories, and enclosed within the circuit of parochial pride, throbbing with fresh life, overflowing with a population inured to struggle, demanding fresh channels for their energies in commerce, and competing with each other in the paths of industry, some of the states and provinces had clashed for breathing space and means of wealth. Yet they were all bound together by the strongest ties of religion, culture, and economic interests. It must be added that they had not gone to London with ready made formulas, nor were their opinions cut in bronze. The social gatherings and the amenities of a common life tended to soften the rough contours, and smooth down the sharpest antagonisms. Old associations were revived with the inspiration of a new meaning, and India's past, full of intellectual and artistic creativeness and of magnificent feats of arms on the battle-field, served them to

remember that they had been of beneficial, if unconscious and unintended, service to one another, and their separate existence had not prevented associated existence. Intertwined as the states are with every interest both public and private in India, to cut them out implied the exclusion of some vital member. I am convinced that there is no other system of government which is so admirably suited to the spiritual aims and economic interests, the varied needs and the enormous extent of this country as federalism. Federation must remain the sustaining pillar of any Indian constitution that may be framed by any body in India, and it is to federation that India must look to for the solution of her problems. I do not claim here,—I have never, as a matter of fact, claimed—infallibility for the specific scheme embodied in the Act of 1935. This is a question of detail which must be considered in its appropriate place, and I will say something about it later on. Here it is sufficient to remark that one is obliged to act upon the facts as far as they can be seen at the time, and it is well known that facts cannot be seen very far. My point is that those who construct a frame of government on *a priori* principles commit greater mistakes than those who see only over the next hedge. In the numerous discussions that took place, it must be admitted, that the best trained minds rarely deviated from the contemplation of concrete data, and dealt with the problems in a spirit of give and take, which was tempered by an abiding faith in the destiny of their motherland.

17. Why the Entry of Indian States is Necessary for Federation

Should such a Federation be a Federation of British Provinces alone, or of British Indian units and the Indian States? This question has been discussed threadbare for the last fifteen years, and I do not think it is necessary for me to deal with it at length. The literature on the subject has grown to serious proportions, and I do not think I shall be justified in traversing the ground again. The question which the framers of the constitution will have to decide is, should the Indian Federation consist of two classes of units, the units of British India and the Indian States ? So far as British Indian Provinces are concerned, I think there are few persons, who have studied the Indian problem in all its complexity, who will deny the necessity of federation of British Indian units.

In the case of Indian States, there are certain important differences which must be taken into account. They are sovereign in their domestic affairs and are bound to the Crown by treaties, engagements, *sanads* (grants), usages and practice. The rights, authority and jurisdiction exercised by the Crown in British India do not extend to Indian States unless express provision is inserted to that effect in their treaties, or the right is an inherent part of paramountcy. As Parliament cannot legislate for them directly, the accession of Indian States to the Federation can be accomplished only by the voluntary act of the ruler. The states are free agents and cannot be compelled to enter the Federation. I am not unaware of the objections that have been raised to the entry of states to the Federation. It is urged that while some of the states have taken great strides, and possess administrations which vie with the best administered provinces of British India, there are a number of backward states, which are saturated with feudalism, and are still moving and thinking in the language of the fifteenth century. Their outlook, tradition and sentiment are in marked contrast with the dynamic progress which many progressive states and provinces have made in the present century. To put it crudely, it is asserted that to yoke together British India to Indian States is like yoking a Rolls Royce to the bullock-cart. Such criticisms are based on prejudice and ignorance, and they leave out of account the achievements of Indian States in practically every sphere. A large majority are no longer strait-jacketed in medievalism or feudalism, and in most of the advanced states of the south, the west and the north, there is really little difference in the standards of administration. In a few small states, it is true, the administration is still crude, and the Princes' pleasures are sometimes at variance with good taste and economy. Some small states remind one of medieval German princelings, when the princes and people lived as in a sweetmeat box. There is as much difference between such dukedoms and advanced states like Hyderabad, as between Columbus discovering America and the skipper of a daily packet crossing between Dover and Calais. Such states are relics of the archaeological period, and they will vanish into oblivion. In large states reform has overtaken extravagance, and it can be said with assurance that, barring some exceptions, the larger states are no whit behind British India in enterprise, character and achievement.

In fact, at a time when Indians had few avenues for their energy and ability, some of the states served as excellent training grounds for our leaders and administrators, and took a quiet but effective part in building up the intellectual foundations of Indian nationalism. Any one who considers this problem from a national, and not a sectional aspect, will be forced to the conclusion that Indian Federation cannot be a reality unless it includes Indian States. It is true that geography, economics, local culture, political organisation, and specific traditions distinguish a few small states from British India. Again, it must be admitted, that there is, at the core of this system, "State Exclusiveness," which is an obstinate force, which neither the example of British Indian administration, nor persistent misrule in a few small states have yet cast out. Such examples are, however, very few and it is safe to say that almost all the larger states have shown an unusual aptitude for adaptation to progress.

18. Other Examples of Federations

Sentimental considerations are not rarely a positive factor in the framing of a constitution. They sometimes play an important part, and are indispensable in creating the right atmosphere and preparing the ground, but the strongest ties that unite are two —defence against external aggression and community of economic interests. The United States of America were combined into a federation by the danger of foreign invasion, and, later on, when this danger was removed, the vital impulse was economic. In Germany, there were greater differences, but the basic features of federalism were not dissimilar. Before the French Revolution there were 360 independent political jurisdictions, including Austria, in the Holy Roman Empire. Kings, spiritual and secular Princes, Imperial Towns, Imperial Townships, Dukedoms, Abbots, divided up among them 20 million subjects. Goethe said in 1830, "We have no town, we have not even a countryside of which we can say decidedly, This is Germany. Ask in Vienna, and people will say, This is Austria. Ask in Berlin, and people will say, This is Prussia." There was no German citizenship as such, nor was there any German national sense among the masses as distinguished from the select band of intelligentsia. India, in fact, offers an easier solution of her problems through federation than Germany

did in 1830 ; for in India, there is undoubtedly a sense of administrative unformity, which has gathered momentum and force in this century. I am not concerned here with the war cries of either of the two chief political organisations, and cannot enter into discussion of controversies of a severely political character in this academic lecture. The fact is that the uniformity of administration and tradition, training and education, throughout British India have developed a sense of administrative unity—which, I may remark here, is distinct from political unity. This is, to my mind, the safest foundation for a federation. Moreover, the states have many of the essential requisites of constituent units of a true federation. They belong to the same race, indeed the racial purity has been so sedulously guarded in some states that there is little fear of admixture of base blood. They are inspired by the same sentiments, and sustained by the same ideals for their country and the same outlook on life. There is no Chinese wall that marks them off from British India. The people of the two parts intermingle and intermarry, and their administration is, in most cases, modelled closely upon British India. Trade is common, and intercourse is close and constant. Why then should there be two rigid, inflexible elements side by side, one enjoying the benefits of a central government, diffusing intelligence and energy, fusing the administrative divisions of British India into a unity, and the other living in a state of solitary grandeur, isolated from political contact with British India, and lacking the language of leadership? Why should the vast population of this land be congealed into the long night of a glacial period of separation? The more one examines the impact of a federal government upon the social economy of states, the more convinced one becomes of the necessity of states' entry into the Federation. Indeed, it is to their interest to participate in the benefits which will accrue from the rapid industrialisation of India as a whole, and the raising of her standard of living, benefits which will flow irresistibly from her alignment with western powers. When India is called upon to shoulder the main burden of her defence, the need for Federation would be imperative. If neighbours have designs upon our freedom, we must combine to ward off absorption or conquest. A touch on our frontiers will injure the ganglia of our spiritual and economic interests, and the ordeal—may India be spared that as long as possible—will weld India and

her people, whether they hail from British or Indian India, into a unity of feeling like no other experienced in her chequered history. The only way to ward off this danger is peaceful association. We in British India must also acknowledge that, in many cases, the patriotism of an Indian State can be effective only if it hangs on to the peg of a dynasty. Independently of dynasty it rarely comes to a rising point, though, in theory, it does so on the public platform and in the press. It is as a Hyderabadi or a Mysorean or a Rathore that an Indian will fight in battle, as he did at Sidi Barrani, Keren, and Amba Alagi. This was precisely the situation in Germany and Italy in the fifties of the last century. If some Indian States come in, and others hold out, their condition will be similar to that of Bavaria, who held out to the last, but found in the end, that in spite of her vigorous independent history and deeply founded individuality, she had to surrender her sovereignty to the Reich in federal subjects, if she wanted immunity from suicidal isolation.

19. On what Principles should such a Federation be framed? External Danger cements jarring Elements

Having tried to point out the inevitable consequence of Federation of British India and Indian States, let me now deal, very briefly, with the bases upon which such a federation should be framed. The Indian Federation shows an amazing and bewildering variety owing to the fact that its units are numerous and they range from provinces which are kingdoms in themselves to small states where feudal India is supreme. These complications react upon almost every aspect of the federal structure. The Princes, being voluntary agents, cannot be compelled to enter the Federation against their will and they are, therefore, in an impregnable position, and can lay down conditions which may be regarded by their opponents as unduly severe. Theoretically, such criticism is sound, but it must be admitted that, in many cases, the states did not adopt an attitude of *non-possums* on some issues. On other issues, their attitude was most unreasonable and it practically killed Federation, which could have been inaugurated just before the war broke out in September 1939, if they had shown a spirit of accommodation.

I should like to make it clear that although I advocate the basic principle of Federation, I am not a champion of the Federation as embodied in the Act of 1935. Bargaining was bound to occur at such meetings, and some of the discussions that have revolved round the entry of Princes have been characterised by negotiations and consultations which have sometimes ended in an impasse. I do not think it will serve any purpose to trace the negotiations that preceded and followed the Act of 1935. Those who have perused the proceedings of interminable consultations, conferences and committees which prepared the ground for the Commonwealth of Australia Act know how difficult it is for full powered states, inspired by pride of independence and jealous of their material interests, to surrender their sovereignty to the federal government even over a small number of specified subjects. Uniformity in administration brings the economy of free trade; in currency, it saves delay, and in weights and measures, it ensures a sense of security; but the units may argue that these advantages are purchased at too high a price. In Germany, Bismarck regarded a war against France as a cement which united the particularist German states into a sacred alliance, and revived the memories of the wars of German Liberation in 1812. It is, of course, true that what was begun by Prussia in 1830 as a crusade was inexorably converted into an intrigue, and Bismarck was obliged to defend many of his actions against German states from the penitential seclusion of his estate. The fact, however, remains that Germany achieved her unity in a popular war against France, and danger from abroad has invariably proved the decisive factor in forging most Federations. It must also be admitted that the particularism of Indian States is a source alike of strength and weakness. They have a deeper sense of their intellectual and artistic vocation than many Indian Provinces, though the form and colour, the material and structure, the warp of their thought and the woof of their fancy, are not modern. If states demand something which is not in exact proportion to their size or population, British India should not, in my humble opinion, take a censorious attitude. Indian Provinces can afford to be generous, and to allow the states a weightage in the Federal legislature which may be slightly in excess of their population strength. I do not propose to discuss the details of the Act of 1935, as I am concerned here

only with the central principles which give it unity and stability. I repeat that the proportion of states' representation, embodied in the Act of 1935, is just and reasonable. It is true, of course, that they have a higher proportion in the Upper Chamber. Some critics may object to it strongly, but the Princes, from the very beginning, attached great importance to both the chambers possessing equal powers. Under the Act, the Council of State will consist of not more than 260 members, of whom 150 will represent British India, 100 will be nominated by rulers of Federated States and not more than 10 will be nominated by the Governor-General. The Lower Legislature will consist of not more than 375 members, of whom 250 will represent British India, and not more than 125 will be appointed by rulers of Indian States. I have already dealt with the objections raised by British Indian critics to the excessive representation of Indian States. The charge has been brought that the Princes were staking their claims at their possible highest, against the final show-down and settlement which cannot be put off for ever. All that I can say is that it is impossible to analyse motives and difficult to assess them, nor is there anything on record to substantiate this charge.

20. Need for Compromise

A federation is founded essentially on compromise. There must be give and take on both sides, and it may be necessary in the case of certain states to buy loyalty to the federation at a reasonable cost. This was done by Bismarck when he brought the southern states of Germany into the Reich. Precisely the same bold policy was followed by Sir John MacDonald when he enlisted the support of the Frenchmen of Quebec for the new Dominion of Canada. The states' insistence on co-equal powers for the Upper Chamber has some justification. The Senate in the United States of America contains the cream of American intellect and character and is the motive force in the direction of its foreign policy, and has been generally distinguished by sagacity, statesmanship and restraint. The *Bundesrath* of the German Empire soon established a reputation for sound judgment and creative work. It was not, of course, a second Chamber in the proper sense of the term, but a Congress of delegates, under the hegemony of Prussia. Its small

size, the quality of its members, and its extensive powers, made it a powerful organ of the German constitution. It is said by some critics that the second Chamber contemplated in the Act is too large for mature and thorough discussion of vital issues, and too small for the effective representation of all the interests which are represented in the Lower. It would have been better to keep it a manageable body, and limit it to 100 members. To this, it may be replied that the framers were faced with the problem of securing the representation of smaller states. A small second chamber of 100 members would have been devoid of national support, and would have raised the jealousy of small states and small provinces, which would not have secured adequate representation under this system. It is true of course, that this could have been avoided if the principle of proportionality had been adopted for the lower, and equality for the upper chamber. Though the principle operates in U.S.A. it would have been utterly inapplicable to the Indian Federation, owing to the bewildering variety of its units. On the whole, the composition of the Federal Legislature, which is the result of infinite labour, is satisfactory. The franchise is undoubtedly restricted, and it must be widened if that body is to have root in the soil.

21. Effects of States' Entry in Federal Structure

The entry of states has necessarily affected the distribution of legislative power between the centre and its units. This is a problem of supreme importance to the stability of a Federation, and I shall deal with it in its proper place. Here, it is sufficient to state that the list of Federal, Provincial and Concurrent subjects is based on the devoted work of numerous Committees which discussed every item in these lists with great thoroughness and industry. It was first taken up in 1930, discussed and reconsidered at different stages, and finally settled when the Bill went through the House of Commons in 1935.

22. Its Effects on Finance

I have so far dealt with the effects of the entry of Indian States in the Indian Federation. Let me refer to another factor of prime importance. It will inevitably affect the financial structure of the Federation. Every one knows that the Princes insisted on the

adjustment of their outstanding claims before they could decide on their admission to the proposed Federation. Again they made it perfectly clear that they were not prepared to pay any income-tax, though they agreed to the corporation-tax, within certain limits. I cannot deal with this aspect at length. But I will make a brief comment upon it at the end, as federal finance will play a considerable part in the stability of units on the one hand, and the Federal Centre on the other.

23. Indian Provinces show Administrative Uniformity

I will summarise the above points by saying that the differrence in the two classes of units of the Indian Federation reacted upon the composition of the Federal Legislature, the classification of subjects, federal finance, and finally, the powers of the executive. For these reasons, Indian Federation cannot be placed in any definite category, and is *sui generis*. It is true that the German Federation too showed considerable diversity, while the component states of the U.S.A. show an amazing disparity in industrial and cultural development. The Swiss Federation, too, has its backward Cantons, like Uri, and progressive Cantons, which have shown a resilience and energy that have placed Switzerland on the map of industrial Europe. Geneva and Uri are markedly dissimilar; so are Minnesota and New York, and Bavaria and Prussia. This diversity is not, however, marked by stratification of its units. In no country in the world are constituent units arrayed, mobilised and organised into classes; nor do units show the baffling complexity and variety which one class, the Indian states, exhibits *inter se*. This will bring out clearly the enormous complexity of the problem that awaits any one who essays the task of constitution-making. I have no desire to go into the details of the Act of 1935, as this will take me farther from my main purpose of dealing only with the principles of Indian Federalism. The distribution of legislative power between the centre and the units was arrived at after thorough discussions, in the Federal Structure Sub-Committees of 1930 and 1931, and those who wish to study it can go through its detailed proceedings. The point to be noticed is that the List I (The Federal List) comprises a number of subjects upon which an important section was exceedingly keen. The latter

agreed that the defence services, railways, currency, post and telegraphs, and emigration into India, should be exclusively Federal. Again, it was conceded that the Federal Centre should be vested with adequate financial and administrative resources to give vigorous statutory expression to the administration of subjects comprised in List I. The main difficulty arises when we deal with the Concurrent List. It is of course, true, that the list contains Codes of Civil and Criminal Procedure, and there are few persons who will deny the boon which all-India Codes have conferred upon this country. They have proved a powerful instrument in the building up of national unity, and have created a sense of solidarity which has burst, and, in many cases, destroyed provincial boundaries. Part I of the Concurrent List must certainly be retained as such, but Part II could, I think, be provincialised. The subjects comprised in numbers 26-36 of List III are pre-eminently suited for provincial legislation; and provinces could energetically undertake many of the duties which are now shared by them jointly with the Centre. Representations to this effect were made by powerful sections earlier, and it was pointed out that the same object could be attained by the establishment of co-ordinating boards from different provinces which could be convened under the guidance of the Federal Government. I need not elaborate this point, as the Minutes of Evidence tendered before the Joint Select Committee in 1933 have been published, and details will be found in the evidence given before it. Experts will undoubtedly emphasise the need for centralisation, and point out the advantages of uniformity in laws and regulations. I have, however, found by my experience—which, I must confess, is very limited—that experts are apt to take a narrow view of their own subjects, and have no perspective of the problem as a whole.

24. Dangers of Over-Centralisation

The desire for centralisation may be carried too far, and if it is pushed beyond reasonable limits, it is likely to cause considerable friction between the centre and its units. Co-ordination of many of the subjects comprised in Part II of Schedule III of the Act of 1935 is not only possible, but necessary. A device of this kind has proved exceedingly useful in many federations in forging new methods, solving many problems of national importance and

minimising the friction and duplication which are inevitable in a federal system. A glance at the meetings and committees convened by the Government of India on subjects which are exclusively provincial since the inauguration of provincial autonomy, in 1937, will convince any one that consultation with provinces has been a striking success. In these gatherings, the trained intelligence and rich experience of the Simla Secretariat, with its century-old tradition of administrative efficiency, was undoubtedly useful in clarifying issues, removing many misunderstandings, and co-ordinating the efforts of autonomous units. The Government of India played the part of an impartial arbiter but it had neither the power, nor the desire to command them. It was a meeting of equals, each of whom owed his existence and welfare to the mutual forbearance of the other members. Co-ordination is not control, but co-ordination is more effective than control, as it is based on the willing obedience of units that are spiritually jealous of the slightest interference on the part of the centre in their autonomous sphere. Many sentimental, religious, and cultural barriers to the triumph of an over-centralised state still exist in India. In India they will continue to exist, and it is the essence of statesmanship to respect these sentiments. The example of Australia and Canada is conclusive on the point. The report on the working of the Australian Constitution points out that the conferences of Premiers of states of Australian Federation have been most useful in centralising the energies of Australian states, and diffusing a uniformity of standards which has removed many misunderstandings. In Canada, too, the subsidies granted to the Provinces of Canada for roads, education, and social welfare, have co-ordinated the efforts of central with provincial legislatures. A review of the consultations between the federal centre and its units in different parts of the world will convince any experienced man that they have produced beneficial effects, and have forged lines of action, which are mutually consistent, conform to public opinion, and are capable of being followed continuously while conditions so permit, and of being readily adjusted when they do not. I admit that labour legislation necessitates all-India legislation in some cases, as in the case of railways in India. Even in this case, no all-India legislation can really be effective unless it takes into account the difference in the standards of living of government employees in different provinces. The standard

of a worker in Peshawar, working on the North Western Railway and that of a railway employee in Tuticorin are likely to vary considerably. It must, however, be added that labour parties in many continental countries have been and are exceedingly keen on centralisation of labour legislation, as this is, in their opinion, the most effective means of maintaining a decent standard of living. On the whole, the great diversity in the standard of living in different parts of India is a strong argument in favour of co-ordination, and labour laws must, in many cases, be based primarily upon the data supplied by each province. I do not wish to pursue this theme further, as I have said enough to show that co-ordination of provincial effort in spheres which are exclusively provincial, though they have been placed in the concurrent list, is more effective than control. The future constitution of India will, therefore, give greater powers to the units of the federation than is provided for in the present constitution, and many of the subjects in Part II of Schedule III of the Act of 1935 should be made exclusively provincial. A minute examination of various items classified in the three legislative lists will simply weary this audience, and I refrain from attempting this here.

25. Residuary Powers

Before I leave this topic, let me deal with the question of residuary powers. This question has bulked largely in political controversies, and has become a subject of acrimonious debate among political parties. In the United States of America, the federal authority in 1787 received only the powers " enumerated ", together with a general power to do what was necessary to make these powers valid; all other powers were reserved to the states; the residual as well as the original authority being, at the commencement of the federation, deemed to lie with these states (Constitution, Article I, Section 8). With certain restrictions, all the other possible subjects of legislation remained with the states. This distribution of powers left a seemingly vast reservoir to states.

The question of residuary powers has been discussed threadbare, and I do not wish to cover the ground again. I have always held that a great deal depends upon the way subjects in the legislative list are classified. If our classification is exact and thorough,

the residue of subjects that will remain unclassified will be so small and trivial that it does not matter whether the centre or the units are vested with it. I admit that such meticulous examination is not always possible. When the fathers of the American constitution in an age of triumphant *laissez-faire* conferred powers on the federal legislature of 1787, and reserved the rest to the states, there were many people who thought that little was left to the states and that the lion's share went to the federation. The rapid progress of industrialisation after nearly seventy years soon convinced the champions of state rights that the latter had considerable scope for their enterprise and energy. However, a constitution framed in 1941 or after should certainly take into account the extraordinary changes wrought in the modern world by industry and commerce, and there need be no difficulty in placing these phenomena within the category appropriate to each. I am old-fashioned enough to believe that Section 104 of the Act of 1935 is a fair compromise between the claims of both parties. As, however, the subject has become the focus of an acute controversy, I see no reason why, after a most careful classification of all possible subjects, the residuary powers should not be vested in the units.

26. Sovereign States of British India and Growth of Provincial Patriotism

I am convinced that the units of the new Indian Federation should enjoy greater power than has been conceded to them in the Act of 1935. What is the federal ideal of champions of autonomy for British Indian Provinces ? It is to assimilate them to the condition of federated Indian States, so far, of course, as immunity from interference by the centre in non-federal subjects is concerned. There will then be sovereign states of Indian India and British India. That this is not a mere pious wish but has been held firmly by a strong section in India, will be clear from the discussions in London in 1930-33. I have always held the view that we must apply the principle of self-determination to British Indian Provinces, and the Indian Federation must be a federation of autonomous units, with full powers, and with only a few subjects reserved for the centre. We shall have sovereign states of British India, which will be united by ties of culture and economic

interests, and will be subject to the Central Government in strictly limited and well-defined spheres. Whatever be the imperfections of this school, it must be realised that it is the clear and vigorous expression of a sentiment which is strongly held by powerful sections in India. A critical examination of this theory will, however, reveal its serious repercussions on finance and administration. They seem to be, in fact, insuperable, and it may be asserted that it is impossible to give effect to it at the present stage of our development. Until the Montagu-Chelmsford Reforms, British India was virtually ruled from Simla, and provincial legislatures were pure debating societies, in which members spoke with bated breath, and in accents of studied moderation and restraint. They had no power, and no control. Genuine provincial autonomy dates only from April 1937, and differs considerably in its range and power from the full-powered states of a genuine federation. The centre has continued to exercise influence in many spheres by advice and suggestions, and the provinces have not yet attained organic unity and have, so far, been creatures of administrative convenience. These are weighty arguments and need careful consideration. However, from the point of view of provincial rights and liberties, it may be stated that the provinces have been welded in a unity of feeling and tradition that justifies us in regarding them as possessing individuality and unity. They have also developed certain characteristics which mark them off from one another. The Punjab has a deeply founded individuality, which blossoms in the severe climate of the north. Bengal makes a vivid appeal to the feelings of a highly gifted race, knit together by a rich and flexible language, with a culture that is a source of pride throughout India. The Maharashtra is the fullest incarnation of the old Mahratta spirit, and though it has lost its position of political primacy since the days of the great Tilak, it has always maintained its coherent policy and stable enthusiasm. Again, the compact linguistic blocks of the Madras Presidency have established themselves as centres of vigorous intellectual and political activity, retaining alike their spiritual vigour and dynamic progress. The Frontier Pathan refuses to be submerged in the vast sub-continent, and whatever his political creed may be, his physical girth and proportions are in strong contrast with the men of the south. My own province is a hybrid, and being the centre of Mughal culture

and Hindu civilisation, has invariably welcomed races from all parts of India. Who then can say that British Indian units have not yet developed vigorous personalities of their own? In fact, the states of America offer greater contrast to a sociologist than the provinces of British India, if we concentrate not on the ruling Anglo-Saxon race but on the multitude of races and creeds that are being drilled and educated into American citizenship. There is greater uniformity in Indian provinces in the spheres of administration, than in the states of America with their bewildering complexity of municipal and state laws, their serious racial problems, and the wide gap between the fabulous riches of the few and the stark poverty of the many. This is due, of course, to the fact that administrative principles were applied on a uniform basis throughout British India till 1919, and a certain general level has consequently been achieved. I should like to make it clear that I have instituted this comparison solely from the point of view of administrative uniformity in British India, and contrasted it with that of American states. The provinces are not merely self-conscious of their developing unity; they contain also the representatives of powerful minorities, who feel that unless their political individuality is safeguarded, there is a possibility of their wishes and desires being ignored. The feeling is genuine and wide-spread, and they consequently dread a highly centralised Federation vested with wide powers, as they feel that in such a system there will be little room for initiative, self-reliance and cultural rights.

27. Federation.

If we look at the content of this constitution, instead of its form, and take the realities of the Indian situation into account, we are forced to the conclusion that in this, as in other issues which go to the very core of a nation's feelings, provincial feeling must be given substantial weight, and patient hearing. No federation can survive if it includes within its bosom elements that are united in a strong opposition on points which they deem to be of supreme importance to their existence, and a federation achieves its objects best when it forbears to use all the powers which have been formally conferred upon it.

I have tried to put the fears of the provinces before this distinguished gathering as realistically as possible, as I shall be lacking in my duty if I did not refer here to the communal problem which has assumed serious proportions in recent times. I have no desire to deal with it here, as it has been the subject of interminable discussions, and as it colours almost every aspect of our political activity. I am convinced that it is the duty of the framers of the new constitution to remove the fears of these units, by vesting them with greater power than was possible in the Act of 1935, and to assure them of impartial and equitable treatment by the centre. This is not the place for a discussion of the minutiae of drafting, and I cannot indicate here the precise methods which should be adopted to achieve the desired result. A complete overhauling of List III of the Legislative List is one. But there are other methods which can be employed to ensure greater provincial freedom. As an example, I may mention that provincial autonomy implies control over legislation, administration and finance, and it cannot be effective unless each province has a reasonable prospect, not merely of passing the laws that are necessary for its welfare, but also of controlling its administration, and exercising power over its resources, actual and potential.

28. Position of Services in the New Constitution

Let us discuss briefly these three spheres. In the administrative sphere, such control is exercised only in Class I, provincial and subordinate services. Over Imperial Services the units, no less than the centre, have at present no control. The framers of the Act of 1935 visualised an enquiry into these services; and a review of their work, and the position that should be assigned to them in the new autonomous provinces, was contemplated. The war has thrown this problem, as it has done other problems, into the melting pot, and we will, I suppose, have to wait patiently for the end of the war before any definite action can be taken. It is impossible to forecast the future, but it is clear to those who have successfully worked the machinery constructed in 1935, that substantial changes must be made in the powers and privileges of Imperial Services in the future Dominion of India. The only safe formula that can be hazarded in this connection is that the centre

must have control over the services employed by the Federation, and the provinces should legitimately aspire to exercise power over the servants employed by provincial governments, whether they belong to Imperial Service, or Class I of Provincial Services. I am however, old fashioned enough to believe that we will continue to employ a proportion of Europeans in pivotal and key positions, nor am I ashamed to confess that the traditions of efficiency, devotion to duty and integrity which they have forged in the chills and fires of nearly 150 years of our chequered history will remain a noble legacy to this country. India wants the best for her future growth, and it should be obtained from every source. The swift progress of India to the status of a Dominion should not be held up by incompetence. I have refrained from quoting authorities on various points discussed here, as their range is so vast that it would have simply swollen the length of this lecture. I may, however, mention that the recommendations of the Services sub-committee of the First Round Table Conference are, in my opinion, still valid, and are basically sound. Briefly it may be stated that the public servants employed by the Federation, to whichever service they may belong, Imperial or Central, should be recruited and controlled by the federal government; while those employed by provincial government should be under the control of the latter. I have not taken into account persons recruited by the Secretary of State for India as experts on special terms. Their case is, of course, different, as is the case of present incumbents, who should retain all rights and privileges which they enjoy at present. In the selection of men for key positions, special terms will have to be offered to men with specialised ability and knowledge and they must naturally be on terms that may be mutually agreed to. All other servants should be under the provincial or Federal government, as the case may be. In the case of Imperial services a uniformity of standards is essential and it is probable that the provinces will continue to recruit such men from an All-India cadre, and will safeguard not merely their rights and privileges, but also the conditions of their recruitment and a high standard of character and training, on a uniform All-India basis. The traditions of Indian public servants in the purely administrative sphere—I am not discussing their work in the political domain, which is, of course, exiguous—are no whit behind those of Germany, England or France, and India can ill afford to ignore their rights or minimise

their importance in our social economy. Whatever may be the experience of services in other provinces, in the United Provinces and I believe in other provinces also, the Imperial Services adjusted themselves to the new conditions which provincial autonomy introduced, with remarkable flexibility, and served the new regime with the same devotion and energy which they had shown in the pre-reform period. There is no reason to suppose that the services will not readjust themselves to future changes with the same alacrity. I have purposely refrained from a detailed examination of this problem. I feel that the success of our constitution depends largely upon the manner in which the problem of higher services in this country is solved. Institutions are nothing more or less than men, and no institution rises above the quality of its inventors and personnel. Our success in solving the problems of the Indian Government of to-day and tomorrow depends upon the capacity of the men who work the machinery of administration.

29. Financial Problems.

Having dealt, perfunctorily, I am afraid, with the question of services, let me deal, very briefly, with the problem of finance. The subject was thrashed out in the two Federal Finance Committees of 1931 and 1932, and was further discussed by the Davidson Committee and the Eustace Percy Committee. It is now nearly ten years since the discussion on this issue started, and the problems which insistently demanded attention, then, are still staring us in the face. "Money" said Hamilton, in the *Federalist*, "is, with propriety, considered as the vital principle of the body politic; as that which sustains its life and motion, and enables it to perform its essential function. A complete power, therefore, to procure a regular and adequate supply of it, as far as the resources of the community will permit, may be regarded as an indispensable ingredient in every constitution." The German political scientists have rightly regarded finance as an integral part of political sovereignty. The dictum of a famous German writer is widely known. "The state is only the sum of its financial capacities, and financial authority constitutes the faithful reflection of political sovereignty." (Hensel). Various principles of distribution of the taxing power between the centre and its units have been devised, but they can all be resolved into three basic methods, (1)

the federal centre and its units may have each its separate sources, exclusive or concurrent; (2) the federation may levy all taxes and assign some to the units, and (3) the units may levy all taxes, and assign some to the centre. Considerable variations are possible in these three methods, and some federations possess so many peculiar features that it is impossible to bring them within any specific category. While the framers of the American Constitution decided the question of the distribution of financial power without any acute controversy and with comparative ease, the financial issue bulked largely in the numerous discussions that took place in London and India. The Princes had prepared their case with consummate ability and skill, and the Butler Committee in 1929 discussed some of the points which had been ably developed by representatives of the Princes' Chamber. They followed up their representations by an able advocacy of their case before the Federal Finance Sub-Committee in 1931. This is not the place for a detailed history of the several Committees that investigated this problem, but I feel that a tribute should be paid here to the masterly survey of the financial situation in the Memorandum prepared by the Government of India. It will be found in the proceedings of the Federal structure Sub-Committee. I am afraid the limited time at my disposal will prevent me from discussing the financial provisions of the Act of 1935 nor is it possible for me to discuss the varied issues that were thoroughly discussed in Committees. I will content myself with a few comments on some of the basic points, and discuss them in the light of experience gained by us since the inauguration of full provincial autonomy.

It must be admitted that the sources of revenue which have been placed at the disposal of the provinces are comparatively inelastic and the centre has been vested with financial powers which, when properly utilised, will bring in increasing revenue into the federal fisc. To this it may be replied, with perfect justification, that, at any rate, the provinces now enjoy greater fiscal autonomy than they did before, and the excise duties which they are allowed to impose together with various surcharges, will tend to relieve the severe financial pressure to which practically all the units have been subjected since the reforms. Again, the provinces have an excellent source of revenue in the tax on agricultural incomes, and if they show initiative and are able to overcome, and, if possible, ignore the criticisms of vested interests, such as big landholders

particularly in the permanently settled areas, they can be sure of adding considerably to their revenue. That many of the provinces have been chary of using their ample powers is not the fault of the Act which clearly vests them with this right. Again the provinces are not really certain of receiving the amount which Sir Otto Niemeyer's Committee recommended for them as it was subject to two essential conditions which are not likely to be fulfilled for a number of years. There is little possibility of the provinces getting their full share of the income-tax promised to them until about 1945. The immediate gain to the units from this head is therefore small while the ultimate gain is subject to conditions which may not be realised within the stipulated period. Another basic objection to the new financial structure is that the British Indian tax-payer is practically saddled with the entire burden of running the Federal Administration, and the Indian States escape comparatively easily by paying the Corporation Tax. The proceeds of this tax in Indian States are not likely to exceed three crores. Nor is this all. The Davidson Committee made a series of comprehensive recommendations regarding the states' contributions which involved very elaborate enquiries and covered an exceedingly wide range of subjects. The question of ceded territories was also discussed, while salt and that perennial source of controversy, sea customs and ports, were discussed. I cannot go into these details, though I am afraid, it will be impossible to give a true picture of the new financial structure without an examination of some of these provisions. Suffice it to say that two Committees—the Lord Eustace Percy and the Davidson Committees—formulated their proposals which were accepted and incorporated in the Act. I may quote here one sentence from the Report of the Davidson Committee, " If, after adjustment has been made, and every consideration which we have mentioned has been taken into account, there is still a substantial balance against British India, even this is not the last word. By the very fact of their entry into Federation, the States make a contribution which is not to be weighed in golden scales."

30. How Other Federations have dealt with this Problem ?

The American precedent and the example of other federations may give us a hint or two, but the Indian Federation has so

many problems of great intricacy that they are not true guides to us and we have to draw entirely on our own experience and data. Some of the difficulties which American States have experienced may reappear in India, though the financial system which the Americans evolved has been worked fairly successfully there. This was due, partly to the fact that the centre and the states were put upon an independent financial footing. They may take from the same source, with certain prohibitions upon the states, but they act independently and seek revenues for themselves, and not with the intention or the duty of assigning them to the other authority for its use. The American system has, however, been faced with two problems to which reference may be made here. In the first place, there is a keen competition between the federation and the states for the conveniently raised taxes. Direct taxes were not to be raised by Congress unless they were in proportion to population, and indirect taxes did not yield sufficient revenue. In the next place, there were frequent disputes between states for taxation rights over incomes and property where the tax-payer is the citizen of one state and the source of income or property in another. The second problem has received attention in many shapes and forms in federal countries, and has reacted on inter-state relations. In India, too, as we all know, certain Presidency towns such as Bombay, are attacked by agricultural provinces for the same reasons. In the German Federation of 1871, however, the financial powers conceded to the centre were liberal, nay, even generous. The Federation had four great fields of finance (1) Tariff duties, (2) Consumption taxes, (3) Postal and Telegraph services, and (4) Contributions from the states in so far as the expenses of the Federation were not covered by these revenues. The contributions were to be levied in proportion to population, and were assessed by the Imperial Chancellor. In fact, the limitations upon the objects of these revenues were few, and there was no restriction upon the amount which could be raised. The Federation had to buy the loyalty of South German States, and Article 38 of the constitution exempted from federal taxation native spirits and beer in Bavaria, Wurtemberg and Baden. With this exception, the sole right of taxation of salt, tobacco, beer, spirits, syrup, sugar and other beet products was vested in the federal authority. Later on, direct taxes were levied by the Reich, and provincial contributions constituted, until

1914, a considerable proportion of Imperial finance. Provincial contributions, however, remained the focus of an acute controversy, and the German jurist Hensel complained that between the Reich and the states there set in "an ignoble higgling and bartering over every pfenning." This was only natural, and it occurs in all states where there is a gulf between the will to obtain benefits and the will to pay for them. Higgling was, however, only an aspect of state particularism, an expression of the desire of the units to receive the utmost and to give the least.

What is the position in India, as visualised in the financial structure of 1935? The Act makes an attempt to endow the centre with adequate financial power, by vesting it with elastic sources of revenue, such as customs. It is of course, true that the provinces have received greater financial powers than were enjoyed by them prior to 1937. The provincial contributions, which were at first proposed, have been dropped, for the present, and an excellent substitute has been found in the income-tax, of which a substantial proportion will go to the federal fisc. The other unit of the Federation, the Indian States, escapes lightly, and will not contribute to the federal fisc its share based either on the basis of population or of revenue. It must be admitted that the financial stability of the centre has thereby been secured, but British Indian units are called upon to shoulder the burden of the government single-handed.

These are some of the objections which have been urged against the new scheme, and I am bound to say that some of them are strong and cogent. I am, and have always been, of the opinion that autonomy of provinces without adequate revenues, is meaningless and futile, and the provinces ought to have been allocated half the proceeds of income-tax. This was the irreducible minimum necessary for their social legislation, and economic programmes. I must also admit that there is force in the contention that all the units of the Federation should be asked to contribute to the federal fisc on a uniform basis. The principle, expressed in this form, is unexceptionable. The states, however, have an effective reply to this charge and point to a formidable series of claims which they urge against the Central Government. I do not think it will serve any useful purpose to rake up the embers of a controversy which is now happily forgotten. If we want partners in a

joint enterprise we must show mutual confidence and trust. Without this, all constitutions are dross, and their machinery will be dead metal. I have stated, as impartially as I could, the arguments advanced by both the parties. My feeling is that the states should be asked to contribute far more than they have done to the federal fisc and should share the expense of the federal administration on a more equitable basis. Again, the feeling in British Indian circles is general that the Davidson Committee was unduly generous to the states, though it must be confessed that its work was extremely difficult and delicate, and it was naturally anxious to remove the seemingly impenetrable barriers to the Princes' entry on reasonable terms. Only those who have gone through the fiery ordeal of protracted negotiations on issues which deal with the very foundations of identity and independent existence can appreciate the appalling difficulties of the parties vitally concerned in these transactions. Bismarck had to use all his repertory of guile, cunning, his capacity for intrigue, and enormous driving power, before he could induce the South German States to enter his parlour. The Bismarckian technique was never employed in India on any occasion and the states were left completely free to decide on their policy. I am, therefore, not inclined to higgle or wrangle with the states over the slight material benefits which may accrue to them from their entry, as I feel that it is not too great a price to pay for national unity. While I am, and have always been, a champion of the legitimate rights of British Indian provinces, I am bound to add that without a solvent centre irretrievable disaster may mar India's destiny for ages. Credit is a most sensitive plant, and once the credit of a country is gone, it is exposed to serious risks. In fact, its economic structure may collapse. It is, in my humble opinion, vital to maintain the centre in a solvent condition, and to achieve this, it is necessary to endow it with an adequate reserve of power and resources, to be used in emergencies. On the whole, the basic principles of the Federal Finance Committee on the financial relations between the centre and the provinces have stood the test of experience, and are sound. I may summarise them here. In the first place, the provinces were to start with a reasonable chance of balancing their budgets; to achieve this, it was necessary to place at their disposal adequate resources; in the next place, the solvency of the Federation was to be assured; and, finally, it was contemplated that, after an

initial period of transition, the Federal sources of revenue shall be derived from British India and Indian States alike. Some provinces have recently utilised the powers conferred upon them by passing provincial acts, and new sources of revenue are assured to them. Bombay and the Punjab have levied taxes on property in urban areas; but few provinces have imposed taxes on agricultural incomes. Let us hope that the powers conferred upon them will be used with prudence. I am afraid they may not be used in some cases, owing to the organised opposition of vested interests. If this is so, the Act surely cannot be blamed for it. I cannot, of course, visualise what will happen after the war. Everything is in the melting pot—the lives not merely of citizens, but of nations,—and it is, in my humble opinion, useless to speculate on the future. I venture, however, to submit that whatever be the fate of Europe, India is bound to forge ahead, and take her rightful place among the great industrial nations of the world. She must make a move and that must be not in one sphere, but in several spheres. She must on the one hand strengthen her units financially, so that they may be able to stand on their own legs; on the other hand, her centre must remain solvent, for if the credit of the centre crashes, then her entire economic life will disintegrate. These two conditions are not inconsistent, but the one is complementary to the other. In countries where the units have been swallowed up by the centre, such as Germany and Italy, the problem does not exist, as there the state, like Saturn, has devoured its own children. Nothing could be more fundamentally opposed to each other than Nazism and Federalism, and no fate could be harder than that of a country under the heel of Nazi tyranny. The safety of India does not lie that way. It lies in the harmonious adjustment of the rights of the centre and its units. India's growing industries will naturally raise numerous social problems in the near future, and any policy that may be adopted will have serious repercussions on her fiscal policy, as well as on the standard of living of her workers. She is adjusting herself to new conditions, and a new technique with surprising rapidity. The conditions laid down by the Fiscal Commission are no longer operative, and the conception of discriminating protection, which has so far held the field, needs to be changed in the light of her actual progress. The protective

policy will undergo modification, and protective duties will have to be revised to facilitate her industrialisation. In this process, the centre will naturally play the dominant role. I have refrained from discussing the details of the financial scheme, as several brochures on the subject exist, and writers have discussed it with great erudition and judgment.

The imperative need for industrialisation in India will unite all the political parties in the strongest bond, and there will be no opposition by any important element on this issue. In my humble opinion, this is the vital issue of the India of to-day and to-morrow. I feel convinced that to-day a nation must industrialise or perish.

31. The Federal Executive—What Should be its Model ?

Having dealt with the relation of federal centre with its component states, let me now deal with the Federal executive. The Federal Structure Sub-Committee of the First Round Table Conference enunciated the principles of parliamentary responsibility which may be reproduced here. "The Constitution will recognise the principle that, subject to certain special provisions, more particularly specified here, the responsibility for the Federal Government of India will, in future rest upon Indians themselves." The Committee suggest that, following the precedent of all Dominion Constitutions, the Constitution Act would provide that the executive power and authority shall vest in the Crown or in the Governor-General as representing the Crown, and that there shall be a Council of Ministers appointed by the Governor-General, and holding office at his pleasure to aid and advise him. The Instrument of Instructions will direct him to appoint as his Ministers those persons who command the confidence of the Legislature, and the Governor-General will invite one Minister to form a Government and request him to submit a list of his proposed colleagues. The Ministers will retain office only so long as they retain the confidence of the Legislature. The Committee based the federal structure on the parliamentary system, and the responsibility of the executive to the Legislature is the essence of this system. Many alternative suggestions were made for a new form of government, and the "group" system was also tentatively broached. An examination of these proposals, however, brought almost every one round to the view that the parliamentary model

was best suited to the genius of the people. On what principles should the federal constitution of India be based ? Should it be based on the Swiss model or the American model ? Is it possible for India to turn her back on the conventions, practices and habits of the last half a century, and adopt a plan which, however successfully it may have worked in the United States of America or Switzerland, has not yet been tried here so far ? Can India brace herself to endure the constitutional climate of a presidential system ? It may be admitted that the parliamentary system has not worked without friction in some provinces since 1937, and opposition has been organised at various places to the policy or lack of policy of some provincial governments. It is, I think, a perfectly legitimate reply to this charge to say that this does not prove the inherent defects of the system, but of the manner and method in which it has been actually worked. I do not wish to go into the question whether the system has been a failure in some of the provinces, as this will, I am afraid, take me into the turbid waters of a political controversy. I feel that this is not the forum for the discussion of such issues. It must, however, be stated that in some provinces powerful minorities feel that they have not been genuinely represented in the Cabinet, and as the feeling is widespread, it has undoubtedly affected the relations between different sections of the country. As realists, we must deal with the situation as it is, and not with an ideal condition. The section in the Governor's Instrument of Instructions which deals with this point is permissive, and not obligatory, and it has placed the Governors in an extremely delicate situation. As constitutional heads of their province, they were obliged to entrust the government to the party with an assured majority in the legislature. It must also be admitted that the insertion of a mandatory provision of this kind can scarcely be reconciled with majority rule, as ordinarily understood.

32. The Difficulties of Governors in the New Constitution.

In a parliamentary system, neither the Governor nor the Governor-General can be expected to play the part of a *deus ex machina ;* he is normally expected to conform to the strict canons of constitutional propriety. These criticisms are valid

enough if we confine our attention to the text of the Instruments of Instructions. But they ignore the provisions of the Act itself. Section 52 of the Act charges the Governor with certain special responsibilities, one of which is the protection of the legitimate rights of minorities. It is undoubtedly an exceedingly difficult point for a Governor to reconcile the mandatory sub-section in section 52, with the permissive proviso in his Instrument of Instructions. The Governors cannot be blamed if they did what every constitutional head would have done, and relied upon their Instructions. The fault lay in the Act itself, which did not attempt to reconcile these two provisions, and failed to provide an effective machinery for enforcing them. On the other hand, a precise and detailed machinery for this purpose would have proved a recurring cause of friction and controversy. It is stated by the critics of the present rigorous system of parliamentarism that in such an eventuality there must be a clear and definite safeguard in the Act itself. In the existing system of parliamentary government, a safeguard of the kind required has not yet been discovered. If the executive had been of the Swiss type, the ministry would have been elected by legislatures and the minority could have automatically secured representation by using the single transferable vote. I must confess that my experience of the working of the parliamentary system in some provinces since the inauguration of the present constitution has modified my views. I feel that unless minorities are included in each Provincial Cabinet and in the Federal Cabinet, there will be no peace in this country. Moreover, the members of minorities in the Cabinets must be real representatives of their community. How is this to be reconciled with parliamentarism ? My contention is that you simply cannot have a parliamentary system of the approved pattern without involving this country in constant strife and confusion. It seems to me essential that in each province there should be an executive, or Cabinet, of the Swiss type, which should contain genuine representatives of minorities. I am, of course, aware of the difficulties with which such a Cabinet will be faced in the legislature. Such difficulties should be overcome by modifying the parliamentary system and adapting it to Indian conditions. We must look at her problems, not from the point of view of a homogeneous country like England but from the point of view of some of the countries in Eastern Europe, with their races, creeds and interests. This problem must be solved, if India is to have peace.

33. Minorities and the Cabinet

We come to the conclusion that a modified form of the parliamentary system must hold the field both in the centre and in the provinces. It should, moreover, be possible to build up conventions, which would soon acquire the force of laws, that in every Cabinet, whether provincial or federal, there must be a genuine representation of minorities. Canada has established such conventions; in Switzerland precisely the same practice has grown up, and in other countries, too, the same rule is followed. In the Provincial Executive Committees of the Provinces of the Union of South Africa, members are elected by proportional representation, and thus minorities are represented in the provincial cabinets. (See Nathan, *South Africa from Within*). They should be strictly adhered to, and should be implemented by the organised opinion of political parties in the country. It may, indeed, be necessary to amend the Governor's Instruments of Instructions, and incorporate a specific mandatory provision to this effect. I quite recognise the inconsistency of such a provision with the provision of majority rule. There will, undoubtedly, be many difficulties in its application, and the position of the Governor will be unenviable. On the other hand, it must be frankly admitted that no constitution, by whomsoever framed can ever be satisfactorily worked in India, unless all powerful sections are satisfied. Otherwise the administration will be liable to the persistent hostility of minorities and interests. It may be objected that such a provision will militate against the basic conception of parliamentarism, and this will create an endless series of wearisome constitutional deadlocks. There is some force in this contention. It must be admitted without hesitation that the two systems are inconsistent. However, when we take into consideration not merely the niceties of parliamentary principles, but the vital necessity of peace and tranquillity in India the position wears an entirely different aspect altogether. When the peace and welfare of millions are concerned, it is best to dilute the theory of pure parliamentarism with realism, so as to ensure harmonious and peaceful existence not only in the provinces but also in the centre. It is necessary to emphasise here that the parliametary system not only confers powers, but it also enjoins duties, and the duties which are

indispensably needed in such a system are forbearance and toleration. All great countries have attained political maturity by acting on this principle.

34. Powers of the Federal Executive

Having dealt with the composition of the federal executive, let me now deal with its powers. So far as the provincial executive is concerned, every one knows that we are now enjoying full provincial autonomy and India has made it an integral part of her daily administration. The system was introduced only in 1937, but it seems as if we have enjoyed it for decades, so quickly does India assimilate new methods. In fact the issue of provincial autonomy had been decided by the Simon Commission nearly 11 years ago, and, but for the discussions that took place in London and India for several years, provincial autonomy would have been in full force and effect in 1931. Moreover, the working of provincial machinery shows conclusively that our provinces have a reservoir of first rate men who can fill the responsible posts of Minister and Premier with brilliance and distinction. Finally, the experience of 1937 has convinced us that the machinery devised in the Act of 1935 was practical and sound, and barring a few regrettable incidents, where it needed oiling now and then, it has borne the strain of the new experiment successfully. This is probably the only fair test to which a new constitution can be subjected.

Political discussions in India have focussed attention on responsibility at the centre. I do not wish to trace the history of this demand, or the genesis of the provisions of the Act of 1935 that deal directly or indirectly with this issue. It is an infinitely complicated subject, and has been discussed threadbare for nearly two decades. Instead of explaining the various provisions of the Act, I will content myself with general comments upon certain important aspects of this problem.

The general plan which guides the student through a maze of sections and sub-sections of the Act is the principle of ministerial responsibility in certain well defined spheres. Under the act, the Federal Ministry exercises control over a large range of subjects. Besides these subjects, there are others which may be

regarded as reserved, such as Indian States, Foreign Affairs, which are placed in charge of the Governor-General or Crown Representative. The Governor-General in the Federal centre and the Governors in provinces have been vested with special responsibilities which they can exercise in their discretion. The list of subjects in which the Governor-General will exercise special responsibility is a long one, and they range from the maintenance of the financial stability of the Federation to the defence of minorities. There are besides special safeguards against commerical discrimination, etc.

Those who have studied the working of the parliamentary system in other countries know, of course, that the executive head of every government is vested with a considerable reserve of power in emergencies. Such rights are inherent in every constitution and emergency powers are necessary to deal with any crises that may arise, such as the war, a constitutional deadlock, and other incidents and accidents of a parliamentary system. Again, it will be agreed by all realists that there is need for the protection of European capital, not in the form in which it is actually embodied in the Act, but in a form that will allay their anxieties and remove fears which, however groundless they may appear to us, are genuinely held. Europeans have a considerable stake in this country as they have invested one thousand million pounds in various undertakings in India, and a constitution that fails to remove misunderstandings which concern the very basis of material existence for a powerful and enterprising section of the community is not likely to inspire confidence. The Nehru Report in 1928 proposed an excellent basis for a compromise on this issue, and its definition of "Citizen" in clause 6 (a) should have considerably allayed the anxiety of this section. Owing, however, to circumstances into which it is unnecessary to enter here, this attitude was modified in the course of discussions that took place later on, and a number of provisions were inserted in the Act of 1935 to which strong objection has been taken by many powerful elements in the country. I am afraid it is not possible for me to discuss in detail the long and uninspiring chapter of negotiations that started in 1928, and ended with the passage of the Bill into law in 1935. I shall content myself here with saying that the constitution must provide adequate safeguards

for the protection of such interests as need them. On the other hand, the Act of 1935 has gone to the other extreme, and has piled up sections on commercial discrimination which go far beyond the demands of various interests in 1928 and 1930. Most of these sections are unnecessary and cannot be effectively enforced. In my humble opinion, most of them should be scrapped, though care should be taken to safeguard all the legitimate interests of European capital in this country.

The Act contemplates that all members of the executive government, both ministers and heads of administration, will approach the problems of their departments in the spirit of partners in a common enterprise. Though ministers will not be entitled to tender advice in the reserved field, they ought to be consulted by the Governor-General. The whole machinery of administration would breakdown, if each side—the transferred side and the reserved side—stands up for its rights, and carries on a guerilla warfare. Conventions are bound to grow whereby the rigid distinction between the two parts of the Federal Government will be considerably relaxed in practice. It must, however, be pointed out that both in matters which deal with special responsibility and in those which are concerned with reserved departments, the responsibility is and must remain that of the Governor-General. I have tried to put in a nutshell many provisions of the Act, so as to give a complete picture of the constitution as a whole.

The Act was passed in 1935, and the Indian political situation has changed rapidly. I am not qualified to speak on behalf of any organisation, and I stand before you simply as a humble student of politics. My impression is that the Act of 1935 did not satisfy any influential element of the Indian people. The central responsibility was fenced round with so many safeguards, that real responsibility of ministers was exceedingly small. Indian opinion had expressed in unambiguous terms the need for incorporating in the Act the goal of Dominion Status, which had been reiterated by Lord Irwin, now Lord Halifax, in 1929.

35. Defence Department

Nor is this all. The Defence Department is a reserved subject, while the function of the Crown in the sphere of paramountcy

leaves a reserve of power to which there is, and can be, no limit. The Indian States will be perfectly free to conduct their general policy in the non-Federal sphere, according to the fluid and untangible laws and conventions of paramountcy. The number of reserved departments is too large, and some, such as Defence, could be transferred. If it is impossible to transfer it, an Indian could certainly be put in charge of this key department. When the financial provisions of the Act are examined, still greater anomalies confront us. Sections 33-37 of the Act, which deal with the procedure of the legislature in the financial sphere, implement the irresponsibility of the Governor-General in the reserved sphere, and authorise the Governor-General to appropriate two-thirds of the revenues of British India for expenditure on these departments as well as on other matters for which he has special responsibility. The defects in the provincial constitutions are no less potent, and have already been summarised above. I have dealt only with a few points which call for special attention, and have simply repeated the criticisms which I made in my work, *The Indian Federation,* in the beginning of 1937. Many points could be added to the list but I do not think I can go into details in this series.

36. India must get Dominion Status of Westminster Variety

It must, in fairness, be added that it is infinitely easier to criticise a constitution than to frame one, and as every constitution is based essentially on compromise, it is unfair to restate objections of violent partisans without at the same time pointing out the significant fact that many of these criticisms are waived when a compromise on these issues is reached. This, if I may say so, is the essence of constitution-making, and without this, serious differences on political problems would automatically lead to civil war. The criticism urged against the present constitution must, therefore, be accepted with this comprehensive reservation. India should, in my humble opinion, be given Dominion Status of the Westminster variety, and there is no reason why defence should not be placed in charge of an Indian Defence Minister, who may, later on, be made responsible to the Federal Legislature. The portfolio of external affairs must, in my opinion, remain reserved

to the Governor-General for a long time. Defence has assumed special importance at the present time, and India has taken a magnificent part in the heroic defence of the Empire. We are all proud of the manner in which her gallant soldiers have upheld our noblest military traditions. Again, there has been no hesitation on the part of autonomous provinces to maintain law and order with a firm hand, and they have not hesitated to call out the military for the maintenance of law and order. They have shown energy and vigour in maintaining the highest traditions of the administration committed to their charge. The recommendations of the Defence Committee of the First Round Table Conference, of which I had the honour to be a member, have not yet been implemented, and effect should be given to them in a generous spirit. In the present war, Indian troops have covered themselves with glory and we are all proud of the splendid part they have played against a highly efficient and mechanised army. The war has given many Indians an excellent opportunity of obtaining Commissions in defence forces and it is my firm conviction that the Indianisation of the army ought not to be delayed any longer. The progress during the last twenty years has been exceedingly slow, but I hope that the present war will show that Indians are not only willing, but able to act as leaders in the Indian army of to-day.

37. Foreign Policy must be Reserved for Sometime

Regarding external affairs, I have long been of the opinion that in the sphere of foreign policy, we are treading on a very delicate ground. Without the prestige and power of the British government it will be impossible for India to make her voice heard in the courts of Afghanistan, Japan or other Asiatic countries. Foreign policy must be directed, for some time, by Whitehall, though Indians should be appointed to responsible positions in the External Affairs Department. India must co-ordinate her foreign policy with that of the Empire and this can be done through influence, consultation and deliberation with the External Affairs Department. Regarding the Ecclesiastical Department, I do not for a moment believe that it will either be neglected or be starved by Indian Ministers. The latter will be as solicitious of their needs

as any Counsellor who might be put in charge of this Department. I admit, however, that such a step is likely to create anxiety and even apprehension among Christians in India and England and I think that we should do nothing that is likely to rouse fears and create an atmosphere of suspicion on an issue which touches the very fibre of our being, as it deals with the spiritual ideals which nourish and sustain an influential element in our social economy and in the army. I should, therefore, be inclined to let well alone, and not touch this Department. The safeguards for minority and special interests, such as land, capital, labour and Harijans should remain intact, and provision should be made for the representation of minorities in the Cabinet. If any special interest or minority voluntarily gives up any, or all of these safeguards, it should, in my humble opinion, be allowed to do so, provided the conditions prescribed in section 308 of the Act of 1935 are fully observed. Regarding commercial discrimination, my view is, and has always been, that sections 111-121 of the Act are very drastic and are unnecessary and I feel that they should be revised, and a formula acceptable both to the European commercial community and the Indian mercantile interests should be devised. I have said above that the Nehru Report had suggested an excellent provision, and if that suggestion had been worked out, a compromise would have been arrived at by now. The formula evolved by the First Round Table Conference, was, in my humble opinion, equally satisfactory, and was, I believe, accepted by many influential elements in both parties. But, owing to circumstances into which it is unnecessary to enter here, an entirely new line was subsequently adopted, and many safeguards were incorporated in these sections of the Act for which there is really no occasion, as we are all convinced no Indian Legislature is likely to impinge upon these rights.

38. Future of Services

As regards services, I have indicated above that all services should be safeguarded against unfair treatment, and it seems to me only just and proper that the rights enjoyed by the present incumbents should be maintained intact. For future recruits, however, a review of the methods of recruitment of Imperial services will be necessary. I have already given an indication of the

lines on which this reform should be undertaken. I am of the opinion that Provincial and Class I services should be guaranteed against insecurity and unfair treatment by the passage of Provincial Services Security Acts in each province.

39. Objections to Provincial Autonomy

What will be the character of a Federal Executive constituted on the principles discussed above ? Will it have considerable scope for its activity and many channels for its energy ? Provincial autonomy consists in a complicated arrangement for the dispersal of sovereignty, and it may be contended that the implications of provincial autonomy discussed above will derogate from the power, effectiveness and range of the Federal Ministry. In this scheme, it may be contended, the Federation will be a weak and spineless body, lacking the courage to formulate a bold policy, and the will to implement it. Again, its sovereignty may be dispersed among eleven autonomous units of British India, and the unity of the state may be vitally affected by this process, and this may have serious repercussions on the quality of Federal administration. Some of the critics go further and assert that centrifugal forces are particularly strong in a country where diversity seems to be the dominant note, and India has taken a century to develop the idea and ideals of constitutional unity. If strong, impenetrable barriers of semi-independent provinces are erected across the frontiers of every province, how is the poor citizen to carry on his daily vocation in peace and quiet ?

40. Reply to these Objections

These are very cogent and weighty arguments, and I should be the last to deny their force, or minimise the risks to which they give expression. It may, however, be replied that provinces are bound to organise themselves on the community of economic interests, and there will be much greater solidarity between an industrialised province such as Bombay with other units similarly situated. The rural folk and the agricultural provinces will gravitate towards each other, and instead of a series of impenetrable barriers, there will be sectional groupings which will burst their boundaries, and unite them by the strongest bonds of material

interests. The present provincial boundaries were fixed haphazard, and were not the result of careful planning or design. When the provinces are knit together by road and steam, commerce and transport, the new channels will cut across the old provincial landmarks. There is another factor which may be noticed. Provincial frontiers have been destroyed by the organisation of all-India social and political organisations, and the great political parties of the country speak and act in the name of India as a whole. There are few provincial programmes which are not based on a policy framed on an all-India basis and executed by a central authority with its headquarters in a cosmopolitan city. Their appeal is to the country as a whole and the language of leadership is intrinsically all-India, and not sectional or parochial. Again, the tendency towards centralisation has made irresistible progress in the most advanced federalisms such as Switzerland, U.S.A. and Australia, and the idea vanquished to-day will perhaps be triumphant tomorrow, and perhaps tomorrow's events may make the orator acclaimed yesterday pay dearly for his passing triumph. Provincial autonomy cannot be kept in cotton wool, and when it meets the fierce rays of the sun, in its actual working, it may be shorn, like sheep, of much of its carefully guarded freedom. This tendency has been at work in countries where the most scrupulous care was taken to vest the units with extensive powers; yet many state rights were slowly asphyxiated in spite of stubborn resistance and almost universal opposition. Lastly, it may be replied that the spirit of the constitution will be changed by judicial interpretations, which, in nearly every federation, such as U.S.A., have tended to deprive the states of a part of their sovereignty by Acts of the Federal Legislature, and most important of all by the rapid progress of industrialisation.

41. Indian Provinces Have Invariably Looked to Delhi For Lead

I have adduced these arguments to allay the fears of a vigorous section that is unduly nervous of concessions to provincial feelings and claims. The logic of facts in every federal country has invariably dealt a severe blow to the aspirations of autonomists, and there is no reason to believe that India will remain conspicuously free from its pervasive influence. The provinces have

had little experience of real autonomy so far, and the people of India have invariably looked for direction and lead in all important matters to Delhi, whether in the times of the Mughals or during the British administration. The Moghul Government might have survived a few decades longer had there been less centralisation and more delegation to its provincial governors; but its theoretical omnipotence and actual impotence ensured its decay and death. These traditions of centralisation, it is necessary to point out, held sway till 1920, when only partial and truncated autonomy was conferred on the provinces, and were not substantially modified till April, 1937.

42. No Need for Anxiety and No Clash of Principles

From the facts cited above, it will be clear that there is really no valid reason for the fears and suspicions of centralists. Provincial autonomy does not imply administrative nihilism, nor does it actually disintegrate the central power. It does, of course, postulate a precise division of power between the centre and its units, but there is, in spite of this division, an intimate and integral coordination of powers of the federal centre and its units. While I visualise powerful Indian Provinces, assured of their position and prestige in the new constitution, enjoying autonomy in the three spheres of finance, administration and legislation and functioning as sovereign states, in British India, I am bound to say that in the actual day-to-day administration of the country as a whole, on a number of most important issues, the work of provincial governments must become integrated with that of the central authority, just as there is ever growing integration between individual and governmental enterprise. A number of problems will daily unite the two, as the economic and social activities of the Federation are impossible without a due and interwoven regard for the work of its units. The democratic theory of majority rule must be tempered by forbearance and toleration, and by the conviction that there are certain ideals of religion and culture on which no legislature should legislate, and it is best to resort to the Roman sagacity of the Swiss Government in their dealings with their constituent Cantons. It is possible that the reforming activity of a newly elected Federal legislature may

regard provincial rights as an anachronism, and it may consequently embark on a course of action that may produce an explosion. I concede that the ultimate demand of the average human being is the amplest liberty to do as he likes, and restrain the other man from doing what *he* likes. This wish, when crystallised, is democratic theory, its organised practice is the party system, and Cabinet Government is its natural flower. Again, it may be admitted that in a country that is pulsating with new energy, the number of people positively and passionately devoted to their own idea of social and political reform is greater than, say, in a country where there is organic unity and settled convictions. Hence it is possible that in India there may be a greater urge for quick changes in our social structure and increased centralisation, than in unitary and organic states. This may, indeed, be conceded and it may also be admitted that to govern is to create, and no creation is possible without struggle with the solid mass of antiquity and prejudice.

43. Constitution Must Be Worked By Men

I am afraid these remarks may be regarded as pious platitudes, and I may be charged with indulging in wise seesaws which give little or no guidance to us in solving the crucial problem of the Indian people. My only apology for this deviation from the narrow scope of this lecture is my conviction that the machinery of a government is no dead metal, but a living, pulsating human organism, which is, and must be, worked by men and it depends entirely for its success upon the willing obedience of its human element. The federal structure may be perfect in all its parts, as judged by the strictest canons of constitutional propriety, but if the machinery is not sustained by inspiration, belief and confidence in the destiny of men who are going to live in it and die for it, who devote their lives to running it as efficiently as they can, it will fall to pieces. These observations are offered here to illustrate the principle that there is no real clash of interests between the Federal centre and its units, and the Federal executive, organised on the lines indicated above, will be able to speak in the name and on behalf of United India.

44. Relation of Federal Executive to Indian States.

Having dealt with the main problem, let me now turn to other issues, which are intimately connected with it. What will be the relation of the Federal Executive to the Indian States? It is clear, and I think the Act of 1935 is perfectly right in emphasising it, that the Federation will exercise control on Indian States only over subjects which have been placed at its disposal by the Federated States. The position of the states on this point is, and has been, clear, from the beginning of these discussions. The state authority will continue to function *pari passu* with the federal authority, and states will continue to legislate on subjects for which they have not acceded, but there will be a marked difference between state and provincial legislation. No province can legislate on an exclusively federal subject, while on concurrent subjects the Government of India have made it a point to invite the comments of provincial governments before undertaking legislation. In the case of Federated States, however, there is, and can be no restriction of limitation of any kind whatsoever upon their right to legislate in non-Federal subjects. Moreover, paramountcy is not mentioned in the Act due, I suppose, to the feeling that its definition will unnecessarily narrow its scope, and restrict the growth of a developing theory. The Butler Committee for the same reason refused to define it and simply said "paramountcy is paramountcy." However, in the sphere of administration, numerous problems of great delicacy and complexity are bound to arise, as there is a possibility of friction between State and Federal authorities. In the provinces, the Governor has a special responsibility under section 52, sub-section (1) paragraph (g) of the Act, to see to the execution of orders or directions lawfully issued to him under part VI of the Act by the Governor-General in his discretion. Sections 125-128 of the Act deal with the relation of the Federation to the Federated States and provides that the Governor-General may issue directions to states which are negligent in enforcing Federal Laws. If such directions are not carried out, the Viceroy, as Crown Representative, can use his powers of paramountcy by re-enforcing his position as Governor-General and get Federal Laws implemented. His powers of paramountcy will, of course, be rarely used in purely Federal spheres, but the states will be conscious

all the time of an additional lever that may be brought to bear in cases of conflict with Federal jurisdiction. Though the Governor-General will be the normal channel of communication between Federated States and the Federal Executive, the Federal Ministers will soon establish contact with the leading states, as a result of the excellent maxim that the source of decision and consultation is also the source of power, and they will in due course deal directly with them. Every state which enters the Federation will have to sign an agreement to execute the Federal Laws in its territories. *The amour propre* of the states has, however, been specially respected in the Act which authorises the Governor-General alone to issue such directions. He is, moreover, authorised to satisfy himself by "inspection or otherwise," that Federal Laws are administered in Federated States.

45. Relation of State Administration to Federal Administration

It is difficult to forecast how, and to what extent, these sections will be implemented. We have had no occasion yet to test its working. It is, however, clear that they have been very carefully thought out, and every care has been taken to respect state jurisdictions and the feelings of states. There is no reason why Federal laws should not be vigorously administered in most of the Indian States, though it must be admitted that important factors must be taken into account in estimating the value of such provisions. In India, as in other countries, states show an amazingly varying level of administrative efficiency. While in most of the large states, the difference between the classes of units in administrative efficiency has virtually disappeared, in some few states progress has been slow and halting. Such states are, of course, exceedingly few in number, but they do exist, and the contrast between the youthful energy of the new federal administration and the brooding melancholy of the eighteenth century may be too great to allow of harmonious adjustment at the outset. The Federal officials, or 'inspectors', may fail to separate the awkward incidents of the hour from the long swing of events, and 'incidents' may occur which may lead to a little unpleasantness here and there.

46. Analogies in The German Constitution

It is instructive to compare these provisions with the corresponding provisions in the German Constitution of 1871. Under this constitution, the Reich was vested with two classes of administrative powers. The power of superintendence—the superintendence contemplated was expressed by means of detail in the Reich statutes, which laid down rules of administration for the states. The *Bundesrat* was later on empowered to make statutory rules by which the departments of German states were bound. Moreover, Article 7 gave the Emperor care of execution of Imperial laws, which were exercised, in the normal constitutional manner, by the Imperial Chancellor. If a dispute arose as to the interpretation of a law or order of the Bundesrat, the latter was called upon to decide the question. In the last resort, the obduracy of a state could be overcome by armed intervention of the Reich. Ordinarily, the Reich did not take a direct part in the administration of federal laws, except in the administration of customs, railways, and military affairs. In other subjects, it was content to exercise only general superintendence. In dealing with the component states, every possible care was taken to avoid wounding the susceptibilities of state authorities and rebukes, prohibitions or commands were prohibited. Normally information could be obtained by the Reich. In the departments of customs, railway and defence, Reich officials dealt directly with state subordinates, and drew their attention to possible improvements and the means of reform. It is admitted by jurists that many federal laws were never properly applied, owing to constant friction between the Imperial and state officials. In time, the Reich obtained the right of direct communication with the departments of states and the right to give them commands. As a rule, considerable time was wasted in formalities and a clumsy and circuitous procedure.

47. American Constitution

The fathers of the American Constitution had a shrewd sense of what was indispensably requisite for an efficient federal state, and the constitution made the President the executor of the laws of the Union and empowered him to appoint officers to carry out this duty. In the American federation, the federal authority

administers its laws by its own body of officials, who are independent of state administrators. The other extreme types, where only legislative power is given, and administration of federal laws is left to state officials, are Switzerland, Canada and Australia.

48. Federal Executive is The Residuary Legatee In The Constitution

I have dealt with this problem at comparatively greater length, as I feel that this question will assume considerable importance when the federal system is inaugurated, and there is impact of federal authorities upon state jurisdictions. It is clear, of course, that the greatest courtesy and regard must be paid to the administrations of such states, and it would, in my humble opinion, be better if we followed the German rather than the American example in this respect. In course of time, the value of federal leadership in administration will be recognised and states will welcome federal guidance and knowledge. In the beginning, however, we have to tread warily. Leadership in such cases must be of a co-ordinating kind, and will have to regard all types of administration—whether State or British Indian—as vital parts of each other, and to treat Federated States as inferior to the federal administration is to create friction and dislocation between the units and the centre. The Federal Executive will be the residuary legatee in the government, after other claimants, such as the Federal Legislature, the Governor-General in the sphere of his special responsibilities, the public services in India and the law courts have had their share. Such an executive can acquire power and energy only when it works in the closest harmony with the Governor-General in the sphere of his special responsibilities, and the states in spheres in which they have not delegated their sovereignty to the Federation, and of course, with the Federal Legislature. If the Federal Ministry has a well-organised and disciplined party at its back, it can take a strong line of its own, and act with considerable vigour and assurance. On the other hand, if parties in the Legislature are split up into fragments, the language of leadership is lacking and coalitions will be the order of the day. A coalition implies indecision and vacillation, and a coalition government is timid and afraid of its own shadow, except in times of war, when a coalition

government is the only true expression of national unity and energy. In times of peace, it will lose its hold in the country, for the people always prefer a Cabinet which does things to a Legislature which only talks. I feel considerable diffidence in forecasting events, and it is impossible to prophesy. However, judging mainly from the composition of the Legislature, the Federal Cabinet will not, in my humble opinion, be a strong body, knit together by the unity of a political creed and inspired by a single leader of strong personality. Quite a large proportion of its members will come from Indian States, and it is probable that on all questions concerning states' rights and privileges there will be a powerful states' bloc which it will be very hazardous to ignore.

49. Influence of Economic Issues

Economic questions will, of course, cut across the boundaries of many states, and it is probable that some states, with a strong industrial bias, may be allied with industrial provinces such as Bombay. Sectional groupings of an economic character will take place, and state particularism cannot then be a prominent feature in the discussion of industrial problems. But the scene may shift again, and all states, whatever their economic proclivities, may unite and present a formidable barrier against encroachment on their special privileges by the dreaded Federal Government. In British India, too, there will be divisions based on communities, and a Ministry, to be successful, must have at its back all the powerful sections in the country; otherwise, permutations and combinations, inside the Legislature may at any time blow it up. The Federal Prime Minister will not be a Julius Caesar; nor is he likely to be an unchallengable oracle; and his views will not be dooms. A Ministry is always on sufferance, and its terms are whether it can render indubitably useful service. If it lets the occasion die, and seeks the palm without the dust, it will collapse like a house of cards. The private quarrels of parties and sections slumber, but they smoulder, and their catholicity of animosities has often proved fatal to the strongest Ministry. On the whole, there will be much less internal cohesion in the Federal Ministry, and in moments of crises, it is not likely to take a strong line, unless it is led by a

leader of acknowledged ability and great force of character. It may be said that I have painted the picture in sombre colours, and the expectations of those who have pinned their faith in Federation as a panacea for India's numerous ills will not be realised. To this, I can only reply that nothing leads to deadlier disaster than cabin-room idealism which ignores the engine-room. I have tried to dissect the future frame of our government objectively, and would have been guilty of exaggeration if I had left out details which are concerned, not with political principles, but with political technique, and are susceptible of solution if we determine to make the new scheme a success in a spirit of trust and confidence.

50. Composite Cabinet May Be Strong—Position of Governor-General

I have tried to analyse the working of such a Cabinet in the light of our experience of composite Ministries. There is, however, no reason why composite Cabinets should be an essential feature of the new constitution. Political organisation has made considerable progress in India during the last decade, and all-India political parties may continue on a few important issues which may weld them in a unity of feeling and programme which will make the Ministry overwhelmingly strong in the legislature; that this will ultimately happen, I have no doubt whatsoever. There is a greater reservoir in this country of intellect and character requisite for such a work than is generally supposed, and I am convinced that the occasion will find the man. The Governor-General will naturally play an important part in making the new scheme a success. He can measure the baffling situations of public and parliamentary life according to settled standards of sure conviction and ripe experience. If he is a statesman of the calibre of Lord Elgin, who made responsible government in Canada a reality, he will allow his special responsibilities to fall into desuetude and follow the practice of all constitutional governments by allowing the parliamentary machine to run smoothly without resort to his special powers. As the Governor-General has a fixed term, he does not pass through office with every gust of the political breeze, and is not to-day a thing of strength and tomorrow a thing of straw, but a permanent representative of the Crown set in the very centre of government for a fixed period. Nor is he face to face in his own

Cabinet with rivals of yesterday and tomorrow. Apart from his legal and constitutional position, which has been discussed in this lecture, the Governor-General, as head of the Federal Government, is an element making for social unity. He is a common possession, and his appeals for unity and his declarations of impartiality as against a divided legislature, are politically of great importance. Ministers are always prepared to listen to someone who has not only authority, but wisdom and experience, and many Governors-General, here, as in the self-governing Dominions have exercised considerable influence by a skilful combination of their power, sagacity and experience. Few Governors have used their special powers, and in the sphere of services, to which they have a special responsibility, they have rarely resorted to powers which were expressly conferred upon them. Had they used all, or even some of their special powers, provincial autonomy would have been a farce or a tragedy, or both. A constitution, like credit, is founded upon confidence and trust, and the new structure will stand firm only if the Viceroy is amply dowered with sympathy and vision. England has sent many Governors-General who have combined these qualities in the past; there is no reason to believe that she will fail to give of her best to India in future. The Governor-General will be the indispensable link between the Ministry and the States, and, by his combination of the office of Crown Representative and Governor-General, he will introduce the indispensable element of unity and solidarity into the administration. A Ministry constituted on the basis outlined above will be exceptionally strong, as it will derive its support mainly from the devotion and faith of millions of men throughout British India and Indian India.

51. India's Position in the International World

Externally, the Ministry will be in a strong position. For the first time in her chequered history, Indian Federal Ministers, directly responsible to the national parliament, will be in charge of great Imperial departments, and will be in a position to put the impress of their personality upon the administration in a manner which has never yet been tried here. Finance, the transport services, defence, commerce, in fact, all the great channels of our national energy which would mould the nation's destiny will be administered by men who will be backed

by well-knit and disciplined parties. India will have Dominion Status, based upon the letter and spirit of the Statute of Westminster. Her most important work will be so to adjust her machinery as to give ample scope for the growth of her industries. The Fiscal Commission Report, too, will have to be modified, to give greater scope for the protection and growth of her nascent industries which India is building up during the war. I am convinced that the next decade will witness the blossoming of her industries, which will make her one of the leading industrial countries of the world. Her mineral wealth is immense and, as has been shown in the present war, her enormous resources have not yet been effectively tapped. She will have a great opportunity after the war, when practically the whole of Europe will be in a state of destitution and bankruptcy, and she will be called upon to supply the needs of the impoverished, wounded countries with all the requisites of economic reconstruction. India is now passing through the same phase through which the United States of America passed during the mid-fifties of the last century, and England passed during the Industrial Revolution. She is on the eve of a great industrial revival, and in this process, the new Federal Ministry can, and will, give an inspiring lead. The Provinces, enjoying fully the principles of autonomous provinces, enclosed within the circuit of provincial pride and provincial patriotism, will develop their individuality along lines prescribed by their climate, their race, and their material requirements. They will sustain these rights in a spirit of co-operation and conciliation with the Federal centre. India's position, in the British Commonwealth of Nations, will be virtually similar to that occupied by Australia and Canada, and her status in the international world would be definite and clear, as she will now resume her place in the international world which she had lost for centuries. Her great past will salute her more splendid future.

I am afraid the last paragraph savours more of poetry than of a disquisition on the constitution of India. My only apology for it is the fact that India's constitution must rest ultimately upon mutual confidence and trust among its numerous interests and creeds and goodwill between England and India. As a life-long believer in the co-operation of India with England, I am convinced that her destiny is linked up indissolubly with that country,

and feel that it is to the mutual interest of both countries to maintain this noble connection. I am no less convinced that the Federation is the only solution of her complex problems.

52. Edmund Burke Quoted

Most of the constitutions of the world have been framed, not by speculative philosophers or legal experts, but by men of solid commonsense, who have had a varied experience of men and affairs, and are able to pick up the esential data from a mass of material. It is sometimes necessary in a constitution to leave some points deliberately vague, so as to allow time, the great healer of contention and strife, to evolve a flexible method. There are occasions when a minute and laborious examination of a section is vital; on occasions, however, wise silence is no less essential. Good intentions, confidence and trust cannot be incorporated in a parliamentary statute but they are the foundations of a constitution. Over-refinement and pedantry may mar a constitution and create suspicion and apprehensions. I may cite here a famous saying of Edmund Burke: "Refined policy has been the parent of confusion and ever will be, so long as the world endures. Plain good intention, which is as easily discovered at the first view as fraud is discovered at last, is, let me say, of no mean force in the government of mankind. Genuine simplicity of heart is a healing and cementing principle."

I have an unquenchable faith in the destiny of our country. How can one lose faith in a people who for more than a thousand years have been living in action and creation, a people that has graven the world in its own image through her art, her synthesis of Islamic and Hindu culture, her grandeur of mind and spirit, and her countless revolutions, a people that has a hundred times passed through the ordeal of fire, and plunged into it again, and a hundred times has come to life again, and never yet has perished ?

53. Princes in the Scheme

I may be told that the Princes in this scheme have had a raw deal, and as they form an august trade union, they are naturally

anxious to preserve their ancient rights and privileges. These criticisms must be listened to with the respect and attention they deserve. It will, however, be found that, in the whole of this lecture, I have tried not only to be just, but generous to the princes, as I feel that no Federation is possible without their co-operation.

54. This Scheme is Feasible, Though Not Idealistic

I am conscious of the feeling that the constitution sketched here will be dubbed commonplace by the idealist and the politician. It may be said that it lacks inspiration, is destitute of ideals, and fails to regulate the organic functions of a nation that has just begun to regain her lost glories and the grace, charm and splendour of her magnificent culture. To this objection, I may reply that there must always be workers keeping up the fire in the engine, while there is fighting on the deck of the ship. The framer of a constitution is like the compass, which, through the raging of the storm, points steadily to the north, and has his feet firmly planted in experience and commonsense.

If the sketch attempted here is looked at closely, it will be found that it is neither strait-jacketed in infirmity of purpose, nor is it devoid of organic growth. In its actual working, such a constitution can, and, I am convinced, will work smoothly and without friction, and though it is not an impressive expression of our political ideals, it can certainly be made the starting point for the fullest freedom in the immediate future.

I will conclude this lecture by quoting the following noble lines of Longfellow :—

> Sail on, Oh Ship of State,
> Sail on, Oh Union, strong and great;
> Humanity with all its fears,
> With all the hope of future years,
> Is hanging abreast in thy fate.

PART II

CONCLUSIONS

55. The Congress and The League

The Constitution sketched in the lectures was based upon the Act of 1935, and it seemed till the eve of the present war that a Federal Government will be duly installed, and the new machinery devised with such elaborate care will be promptly set in motion. Nobody ignored the difficulties that were inherent in such a scheme at a time when the two powerful and well-organised parties in the country were inflexibly opposed to its basic principle. The Muslim League offered a determined opposition to it in 1939 on the plea that the Muslim community would be simply overwhelmed in the Federal centre, which must remain predominantly Hindu. It feared that not only would the autonomy of predominantly Muslim provinces, such as Bengal and the Punjab, be seriously undermined, but the Muslims in the centre, also, will permanently remain without influence, prestige or power. The Congress had consistently opposed the scheme on an entirely different ground. It viewed the Indian States as the last refuge of vested interests and hoary customs, and, having acquired power in seven provinces of British India, it was determined to secure its hold and influence among the subjects of these states. It is possible that greater despatch in the settlement of some of the issues which the Act had necessarily raised might have paved the way for the establishment of Federation before the war broke out, but the declaration of hostilities on September 3, 1939, left the Governor-General no alternative but to announce the "suspension" of the federal scheme. Everyone conversant with the political situation in India must admit that this was eminently a wise policy, as without such an announcement, it would have been difficult to maintain Indian solidarity against Nazism, and impossible to mobilise effective support for the war.

56. Pakistan

The suspension of Federation destroyed the basis of the entire scheme and we are now left precisely where we were in the beginning of 1930. I am afraid that, as a result of this policy, the federal scheme embodied in the Act of 1935 is now impossible to work. The Muslim delegates to the London Conferences in 1930-1933 had made it perfectly clear that no federal scheme will be acceptable to their community unless constituent units were vested with substantial powers in the financial, legislative and administrative spheres. The community had consequently opposed the scheme on this ground, and, after the revival of the League in 1936, its rejection by that body was a foregone conclusion. Not content with rejecting the scheme, it has developed an alternative programme of its own in Madras, last Easter, and has adopted the Pakistan not merely as an ideal, but also as its manual of action. There can be, and is, no connecting link between the Federation of 1935, and the *Pakistan* of 1941. For this reason, the federal structure of 1935 has now collapsed, and there appears to be, for the present, no possibility of a compromise between the two theories, unless it is found in the confederation of the type embodied in the constitution of the Soviet Republic. This, however, will raise many more problems than it will solve and I refrain from discussing it here. If provinces had been vested with greater powers in the Act, it is possible that a *via media* might have been found. But the working of certain provincial cabinets, combined with the fears, suspicions and apprehensions that had been aroused in the mind of minorities and special interests produced a painful impression not merely on the mind of leaders, but also on the rank and file. The old creed of sovereign states of British India was discarded, and its place was taken by the Pakistan programme. It is necessary to remember that the Pakistan is not a theory but a manual of action, and the League having solemnly adopted it this year, it is inevitable that its economic, constitutional and geographical implications should be developed to their logical conclusions, in course of time.

57. Communal Friction

Various persons may ask whether it would not have been better for India if the Government of India Despatch of 1930 on Constitutional Reform had been implemented in 1931, and responsive, though not responsible, government introduced in 1931. The provinces, too, would have been given full autonomy in that year. It may be contended that the Central Government would have been functioning now for nearly ten years, if this scheme had then been put in operation, and provincial ministries would have introduced far-reaching ameliorative measures during the last ten years. The Simon Commission had recommended full provincial autonomy in 1930, and there would have been little difficulty in giving statutory expression to their proposals. The argument is plausible, but to those who have been engaged in the process of constitution-making, it is perfectly clear that the Government of India Despatch of 1930 would not have satisfied a single organised party in the country. The government in the centre would not have been responsible government at all and would have depended for what representative character it could acquire solely upon usage and conventions, which would have varied with the personality of members of the Council and of the Governor-General. Dominion Status of the Westminster type would have remained a distant goal, and the provinces would have remained under the control of an irresponsible Central Government. Not only would the national demand for Dominion Status have remained unfulfilled, but also the Indian provinces would have been deprived of the prospect of developing into strong autonomous units. A certain fatality seems to dog political discussions in India, and schemes of her constitution have followed one another with kaleidoscopic rapidity during the last twenty years. I do not think I can trace here the causes of the past failures. To all impartial persons, however, one of the chief causes is the deterioration in the relations of the two communities. Had the two great communities maintained the unity and cordiality which pervaded this land at the height of the Khilafat agitation, Dominion Status would have been achieved by her by now. It must be confessed that there is no visible improvement in these relations, and the two communities are now arrayed and disciplined in hostile camps, and have now become two "nations." The constitution of a country must

give a faithful picture of its basic problems. It must trace not merely fertile valleys and green fields but also barren land and sandy soil of the country. India is now rent in twain by two powerful and opposing theories of life, one passionately emphasising its indestructible unity, the other insisting on self expression in completely independent and sovereign states, created solely on the basis of religion, and regarding the present administrative unity as wholly the result of British statesmanship. The new creed insists on applying the theory of self-determination to the component elements of the Indian population, and in vesting the latter with sovereignty and independence. The Congress demand for complete independence is met by a counter-demand for the principle of self-expression and freedom for the inassimilable elements in India's national life. "A free Islam in a free India," is the motto of the new programme. The new creed also points out the inconsistency involved in the demand for independence. If Indian unity is the result of British statesmanship, then the cry of independence is meaningless and even misleading, for once independence is attained, and the British forces withdraw, Indian unity will disappear like the morning mist, and she will again become a prey to the predatory instincts of her powerful neighbours. It is, therefore, illogical for advanced Indian politicians to insist on "independence," and to declare, in the same breath, that England cannot "unwrite the history of India," and must therefore, prevent her partition. If England concedes "independence" she will do what England has done in other colonies that have acquired Dominion Status. She will, then, call upon India to defend herself against external aggression and internal disorders, and will decline to share this responsibility with India. It will be exclusively India's concern, and she must deal with these problems unaided. She has followed precisely the same policy in respect of other Dominions, and will be perfectly justified in doing so in India. It is plain to the meanest intelligence that to talk of "independence" at a time when India herself is seething with communal strife of unexampled intensity and range is to expose the country to the horrors of anarchy on the one hand and invasion on the other. I cannot deal here with the implications of the Pakistan scheme for the subject is intensely controversial, and I feel that I had better leave it alone. I feel, however, that the phrase "unity of India."

should be carefully analysed. India has achieved social and cultural unity to a very large extent and in many urban areas there is little cultural or social difference between the intelligentsia of the two communities. On the other hand, political unity in India during the last century and a half is wholly the result of British policy and administration, and if the British Government severs all connection with India tomorrow, she will be thrown back into the horrors of the eighteenth century. Hence, social and cultural unity in India is a reality; but political unity is based, *in the present circumstance,* wholly upon the maintenance of the British connection.

58. Genesis of the Statute of Westminster

I cannot discuss here in detail the genesis of the proposals formulated by Mr. Lionel Curtis in 1915 in his *work on the Problem of the Commonwealth,* in which he gave an elaborate draft of an Imperial Federal State and made a reasoned plea for summoning an Imperial Convention to frame a constitution for such a state. Mr. Curtis had been a secretary to Lord Milner, and the latter, at a conference of the Empire Parliamentary Association, on July 28, 1918, publicly supported it. However, not a single member of the Dominions present agreed with either Milner or Curtis, and subsequent discussions in Dominion Parliaments showed that opinion in the Dominions was strongly opposed to the federal scheme. It was clear to all practical men that a federation of the Dominions under the aegis of the mother country would be strongly opposed by the Dominions and the matter passed out of the realm of practical politics. General Hertzog had unfurled the flag of "independence" in South Africa, and his Nationalist Party had secured substantial support among the Boers. In the special session of Parliament held in September, 1919, to pass an Act ratifying the Treaty of Peace and adopting the Mandate for South-West Africa, General Hertzog clinched the issue by asking General Smuts if South Africa had the right to secede from the Empire. The new relationship between England and her self-governing colonies was clarified in a statement issued by the Imperial War Conference in 1917, which declared that "any adjustment of constitutional relations should be based upon a full recognition of the Dominions as autonomous nations of an Imperial

Commonwealth, and *of India as an important partner of the same;* should recognize the right of the Dominions and India to an adequate voice in foreign policy; and should provide effective arrangements for continuous consultation, and for such necessary concerted action, founded on consultation, as the several governments may determine." The germs of the Statute of Westminster were contained in this declaration, and the development of Imperial policy from 1917 to 1926 has run along the lines marked out by it.

Though Canada had received the consent of the British Government to the appointment of a Canadian minister at Washington in 1920, none was appointed till 1926. However, in 1922, Canada directly negotiated a treaty with the United States on halibut fisheries without reference to Great Britain. In 1924, General Smuts was ousted from power by General Hertzog, and the latter determined to test the validity of the phrase Dominion Status in London. In Canada, a very serious issue had been raised in the quarrel between Mr. Mackenzie King, the Canadian Prime Minister, and the Governor-General of the Dominion of Canada. The latter had refused to dissolve the Canadian Parliament on Mr. Mackenzie King's advice, and had allowed his successor what he had denied to Mr. Mackenzie King. The Irish Free State, too, was restive, and was keen on clarification of the issue. The resolution of the Balfour Committee of the Imperial Conference, in 1926, which was incorporated in the Statute of Westminster must be read in the light of these facts. It defined the nature of the new society and the new relationship which had emerged after the War. The members of the new society are the Dominions and the United Kingdom. India was mentioned in the resolution of the Imperial Conference, 1917, cited above, and a specific reference was made to her, along with the Dominions. In the resolution of 1926, India is not mentioned at all, and the difference in the status which she occupied in 1917 and that assigned to her in 1926, is striking. The members of the new society are "autonomous communities within the British Empire, equal in status, in no way subordinate to one another in any aspect 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." The

equality here defined is one of status and does not necessarily extend to functions. In fact, the Balfour Committee added the following rider to the definition quoted above, "The principles of equality and similarity, appropriate to status, do not universally extend to function." The aims and ends of the British Empire were also stated as follows. "It depends essentially, if not formally, on positive ideals. Free institutions are its life-blood. Free co-operation is its instrument. Peace, security and progress are among its objects." The Statute of Westminster made each Dominion Parliament formally and legally the supreme authority of each Dominion both for internal and external purposes. It made all the Dominion Parliaments equal, in their spheres, to the British Parliament in its sphere. Hence, Dominions today are Sovereign States, and as such, they appoint their own ministers to other States. The Crown, however, unites all the Dominions, and is the only legal link that binds them together. The conception of Dominion Status, too, is changing. It is dynamic, and not static, and the present War is bound to modify the relations between the Dominions and the United Kingdom which had been defined in 1931. South Africa and the Irish Free State will develop the logical consequences of the ideas and ideals of the Act of 1931, and will set the pace and lead other Dominions in the reorientation of Imperial policy. Australia is bound to the United Kingdom by the strongest ties of self-preservation. Yet Mr. B. K. Long in the *Empire and the World* (edited by E. T. Cook) stated as follows:—

"To deny the right of any Commonwealth Community to pronounce itself a republic, or to secede, or to attempt to declare itself neutral in war, is to waste words. There is no authority within the Commonwealth which can restrain any member-State from doing any of these things. Whether, if any member-State does any of them, the other member-States will acquiesce in what it has done, and will recognise it as a Commonwealth, is another question."

59. How the Statute was worked

I have dealt so far with the demand for "independence" which is voiced by the Congress, and have tried to develop its implications. It is interesting and instructive to compare the

"independence" demanded by this organisation with the substance of freedom and the reality of power which the Statute of Westminster confers upon the Dominions. I feel that I must deal with this point in greater detail, as there seems to be considerable misunderstanding of its provisions. Let us study not merely the Act itself, but also the manner in which it has been worked in the different Dominions. I am afraid that some of the critics of the Statute of Westminster do not seem to me to be aware of the profound changes which the judgments of the British Privy Council, and the practices of Dominions have introduced. The Statute of Westminster was passed on December 11, 1931. I cannot deal with the subject at length, but I think it is necessary to give one or two examples. The Irish Free State and the Union of South Africa have secured virtual independence by utilising this measure and developing its conceptions of legislative independence in various spheres, particularly in the sphere of foreign relations. Section 4 of the Statute lays down that "No Act of Parliament of the United Kingdom passed after the commencement of this Act should extend or be deemed to extend to a Dominion unless it is specially declared in the Act that the Dominion has requested and consented to the enactment thereof." The Dominions have utilised this Section along with Sections 2 and 3 to initiate legislation which has transformed the character of their legislative independence. In this movement, the Irish Free State, with its heritage of political and racial animosities and its hereditary suspicion of the British Parliament, passed the Removal of Oath Act, 1933, deleting from the oath of allegiance all references to the King. Similarly, references to the King have been omitted from all official documents, and the King's head has been removed from stamps and coinage. South Africa has laid down in an Act of 1934 that the "Parliament of the Union shall be the sovereign legislative power in and over the Union, and no Act of the Parliament of the United Kingdom shall extend to the Union as part of its law unless extended by an Act of the Union." The claims of the Irish Free State and the Union of South Africa to the most comprehensive interpretation on the Statute of Westminster were confirmed by the decisions of the British Privy Council on June 6, 1935, in two cases, *viz.*, the British Coal Corporation *versus* The King, and Moore *versus* The Attorney-Gene-

ral for the Irish Free State. In the latter case, the Privy Council upheld the Act called the Validity of the Constitution (Amendment No. 22) Act, 1933 to abolish the right of appeal from Supreme Court of the Irish Free State to the Privy Council, as provided in the Treaty of 1921 and in the Constitution of the Irish Free State. The Lord Chancellor observed in his judgment that the "Statute of Westminster gave the Irish Free State legislative power to abrogate or repeal the Treaty of 1921. This power flows from the fact that the Treaty and the Free State Constitution form part of the Statute law of the United Kingdom, which the Statute of Westminster gave the Irish Free State legislative power to upset." In the case of British Coal Corporation *versus* The King, the Privy Council upheld the action of the Canadian Parliament in abolishing appeals in criminal cases to the Judicial Committee on similar grounds.

60. Extension of Powers of Dominions

The Dominions have not been content with claiming complete legislative independence in domestic affairs. They have given a much wider interpretation to the Statute by acting independently of the British Foreign Office or Dominion Office, and dealing directly with the King on the foreign policy of their countries. The Status of Union Act of South Africa, passed in 1934, provided that the King's authority in foreign affairs could be exercised by the Governor-General. Dr. Keith regards it as "a striking innovation." This Act, as well as the Royal Executive Function and Seals Act of South Africa, makes it clear that as the Governor-General of South Africa can exercise the external prerogatives of the Crown, he could also declare neutrality in a British war. General Hertzog often asserted this doctrine, and Mr. De Valera has acted upon it with remorseless logic. On September 2, 1939, the day before the declaration of war, the Irish Dail and Senate passed two emergency measures. One declared that a state of emergency existed, though Ireland was not at war, and the other conferred upon the government powers to make necessary provisions for the safety and preservation of the state. Canada delayed the declaration of war till September 10, 1939, "to emphasise their separate national status, and the independent decision of the Dominion." The incidents in South Africa are too

fresh to need repetition here. General Hertzog informed his Cabinet on September 3 that he had decided upon a policy of neutrality and moved a resolution to that effect on September 4. General Smut's amendment to the resolution was passed by 80 votes to 67, and South Africa joined the democratic powers in a common struggle against Nazism. With regard to succession to the throne, the Preamble to the Statute of Westminster lays down that "any alteration in the law touching succession to the throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as the Parliament of the United Kingdom." On the occasion of the abdication of King Edward VIII, the Dominions were consulted and some of the Dominions, though not all, exercised their right to communicate directly with the King, whether in the shape of formal advice or otherwise. Their status in this respect was equal to that of the United Kingdom Government, and the Dominions had to approve of the King's abdication before the Act of British Parliament could be voted. Most of the Dominions did it as a matter of course, but the Irish Free State here, as elsewhere, seized the occasion to introduce important constitutional changes. On December 11, 1936, the Dail passed two significant Bills. The first removed from the constitution all the remaining references to the Governor-General and the King and omitted the article relating to the salary and appointment of the Governor-General. It laid down that, in future, all bills, when passed, shall be signed by the Chairman of the Dail, who will also summon and dissolve Parliament on the advice of the Executive Council. The second Bill provided that in future the appointment of all diplomatic and consular representatives and the signing of all international agreements shall be made on the authority of the Executive Council. It added that the King "so recognised may and is hereby authorised to act on behalf of the Irish Free State for the like purposes as and when advised by the Executive Council to do so." The delay in legislation produced the anamoly that in the Irish Free State King Edward VIII was still king whereas George VI had already succeeded him across the Irish Channel. The new Constitution of the Irish Free State, which came into force on December 29, 1937, has practically swept away the remaining obstacle to freedom, nay, even to secession. All references to the King and Commonwealth are scrupulously avoided, and it is provided that "for the pur-

poses of any executive function of the Eire or in connection with its external affairs," it may provide any "organ instruments or method of procedure," and the latter replaces the agency of the King, while "the Commonwealth itself is changed into any group or league of nations with which the Eire may be associated for the purposes of international co-operation." As the *Round Table* for June 1937 points out, "the Free State will apparently remain a member of the British Commonwealth of Nations and recognise the King for external purposes so long as it pleases its Government to do so." The Statute of Westminster cannot prevent the establishment even of a Republican form of government in the Irish Free State, as the constitution has already dropped all references to the King and Commonwealth. It is, of course, true that the Statute provides that any modification in the law of succession to the throne must be made unanimously by the Dominions severally and by the United Kingdom. Dr. Keith opined in 1936 (*The King and Imperial Crown*) that "a declaration of neutrality would virtually mean a secession from the Commonwealth." The Irish Free State has rigidly enforced its neutrality, in circumstances of great difficulty, yet it is still presumed to be a member of the British Commonwealth. A few other results of the Statute may be noticed here. The Crown no longer disallows Dominion Acts or withholds assent from reserved bills, and all restrictions on the freedom of legislation on merchant shipping and Admiralty jurisdiction have been removed. Again the Irish Free State has stopped all appeals to the British Privy Council by an Act passed in 1933, while Canada has stopped all criminal appeals. In Australia all important constitutional cases pertaining to the relations of state and Commonwealth *inter se* are decided by the High Court without appeal, save by leave of that body, now never given, to the Privy Council. In conformity with the resolutions of the Imperial Conference of 1930, and the Statute of Westminster, the Governor-General is the nominee of the Dominion Government in office and could be removed at their pleasure. He cannot, therefore, withhold his signature from a bill, nor can he reserve a bill. He cannot refuse dissolution of the legislature. He occupies precisely the same position as the King *vis-a-vis* his Cabinet. The Irish Free State has gone further. It has abolished the office altogether and substituted a President elected by a direct vote of the people. In the sphere of foreign affairs, the Dominions have the right to conduct them in their own interest directly through

their own agents, and have ministers to foreign courts and receive ministers from the latter. Another significant measure was passed by the Union of South Africa in 1934, entitled Royal Executive Functions and Seals Act, which provided not only for the striking of a great seal and signet, but also authorised the "use of the seals and the signing of any instrument whatever for the Crown by the Governor-General on the authority of the Cabinet, if for any reason the King's signature cannot be obtained, or to obtain it would frustrate the object or unduly retard the despatch of public business." The Statute is of great importance in the evolution of Dominion independence. It enables a Dominion to decide upon its own foreign policy and pursue it without reference to British attitude. In the second place, the power conferred by this Act would facilitate secession from the Commonwealth. Dr. Keith asserts in his "King and Imperial Crown" that it was once declared by General Smuts that a Dominion had no power to sever connection with the Crown "for to such a bill royal assent could not properly be given." This statement does not seem to take into account the wide powers which the Act, mentioned above, confers. In fact, the South African Government could, after passing such a Bill, advise the Governor-General to affix his signature and, as the Governor-General would be the nominee of the Cabinet, he cannot refuse assent. Hence secession is possible under the Act of South Africa.

61. The Statute Confers "Independence"

I am afraid the account of the Statute of Westminster has been given at an inordinate length. I have done so, as I feel that there is so much loose talk nowadays of "independence" and the Statute of Westminster that we should know precisely what these words mean. The word "independence" has not yet been precisely defined, though it has undergone many transformations and has at one time been regarded as synonymous with Dominion Status. The Statute of Westminster has been frequently referred to, but it is clear that a number of persons who have criticised it do not yet know how it has been interpreted in different Dominions, and what conventions and usages it has developed. It will be clear from the sketch attempted above that it confers legislative independence and also gives Dominion Status in external

affairs. I do not know if we shall imitate the ingenuity displayed by the Irish Free State in devising curious ways for circumventing the Statute, nor should the example of South Africa be held up to us as a model. There are several reasons for the drastic methods adopted by the two governments, but it would serve no useful purpose to enumerate them here. Suffice it to say that the legacy of racial animosity and conflict with these two governments, headed respectively by Mr. De Valera and General Hertzog, is reflected in the measures sponsored by these two narrow-minded nationalists. Canada and Australia have adopted a different technique and have maintained a balance which is in marked contrast with the draconian decrees of the two other governments.

If Indian statesmen and politicians will ponder over the implications of the Statute of Westminster, they will find that if India is guaranteed such a status after the war, she will be virtually independent in her domestic affairs, and will exercise effective control over her foreign policy.

62. How Parliamentary Government worked in the Provinces

Having dealt with the problems connected with the Statute of Westminster, let me now sum up my conclusions on the working of parliamentary government in the provinces. I propose to avoid discussion of controversial problems, and restrict this survey, brief and jejune as it is, to a dispassionate analysis of the situation. The survey must necessarily be restricted to the working of provincial governments since the inauguration of full provincial autonomy in four provinces in April 1937, and 7 provinces in July 1937. The general impression which is produced by the study of the working of provincial governments is that the parliamentary system worked, on the whole, successfully in most of the provinces. It is, of course, inevitable that during the transition stage when a new era is inaugurated, men's minds should be keyed up, and power should change the character of men who are either vain or weak. Such cases were few, and the majority of men who were appointed to position of responsibility in the provinces were persons of character and ability. A few cases did occur of lack of balance, and a failure to appreciate the point of view of opponents. It would, indeed, have been surprising if such a phenomenon had not occurred. These were, however, excep-

tions, and, on the whole, the machinery worked smoothly, though it needed a little oiling here and there. The services adjusted themselves to the new era with remarkable flexibility. The political structure which had been hammered into shape in London, when tested in the crucible of experience, bore the strain of these changes without any visible crack, and India began to look ahead, and plan her future, while Indian youth were buoyed up with new aspirations and a new vision. India pulsated with new energy, and all the Indian provinces were bent on developing their resources of industry and intellect, frantically bewailing the lost time, absorbing to intoxication the strong wine of new thoughts and passions that kept pouring from those long-buried amphora of inspiration. The reforms inevitably threw up many-sided, combative and self-centred crowd of leaders, assistant leaders and sub-leaders, each with his own technique and his own interpretation of the new dispensation. The year 1937 was the spring time of our endeavour, as the new ministers developed their ambitious programmes of reconstruction, and mobilised the enthusiasm of their followers by attempts to translate into the language of the statute, and of the budget the election pledges which had been so lavishly distributed. On the whole, the provinces used their newly acquired powers with prudence and tact, and many provinces could point to substantial achievements. It is true that in some cases an impression was created that ministers had no definite programme, were pure opportunists, and were sporting as a kingfisher above the stream. In some provinces there was no popular principle to which some Cabinet could appeal, and they decided to appeal to no principle, and to act merely as caretakers. This process was carried to amazing length, particularly in Sind, where principles, parties and individuals changed with baffling rapidity, where Ministers clashed together in persistent furze, disputed the sovereignty of their province on bloodless parliamentary battles, discovered ephemeral principles, and passed away like mists upon a mountainside beneath a puff of wind.

63. Cabinets of Swiss Model

On the whole, the parliamentary system has taken a deep root in the soil, and he would be either a pure theorist or a pure

revolutionary who would advocate a complete change in the present system. All the self-governing institutions of this country—and they are numerous, as they range from Municipal and District Boards to Improvement Trust, etc.,—are based on this principle. Most of us have been nourished on this doctrine, and I along with others started my public life in the U. P. Legislative Council, in 1924, with a firm belief in the efficacy of this creed. This belief has been strengthened, rather than shaken, by the manner in which the system has been worked and by the success which it has attained. I am the last person to advocate change that may have a serious repercussion on our political future. I feel, however, that certain minor adjustments in the system are necessary if the parliamentary system is to have a fair chance in this country. Unless we remove these defects which, by the way, are simply changes of detail, parliamentary system will be very difficult to work in most parts of India. I make these suggestions with the greatest diffidence, in the firm belief that they do not change the structure of the system, and the latter will be strengthened and consolidated by these improvements. In the first place, the composition of provincial and central Cabinets should be based on the model of the Swiss Cabinet, and not on the English Parliamentary model. Every Cabinet must include representatives of minority communities, who should be real representatives of their communities. This provision is indispensably necessary for the peace and tranquillity of India. It was the lack of real representatives of minority communities which created a feeling of intense dis-satisfaction among members of these communities. This statement applies to all minorities, and is not confined to any community and to all provinces of British India. The atmosphere in the country was polluted with communal strife which has persisted with the tenacity of physical growth, and all the previous humours and discords of the country, which many fondly imagined will disappear after the reforms, acquired a new character and a new meaning.

The generations were prepared, the pangs,
The internal pangs, were ready, the dread strife
Of poor humanity's afflicted strife
Struggling in vain with ruthless destiny.

64. Territorial Representation

I come now to my second suggestion for the improvement of the parliamentary system. The elections to provincial legislatures were held on the basis of the wide franchise which had been recommended by Lord Lothian's Franchise Committee and competent observers have testified to the soundness of these proposals. The scheme worked, on the whole, satisfactorily, and in no place did the machinery for holding elections break down. The provincial governments co-operated whole-heartedly, and Lord Lothian and his colleagues may congratulate themselves on the achievement. The restrictions which had been imposed on the Lothian scheme in the Government White Paper were removed, and the scheme was consequently given a fair trial. There were naturally many opponents of the scheme, and it was inevitable that it should run the gauntlet of criticism by persons whose vested interests were threatened by these proposals. There were two points in this scheme which naturally occupied the chief attention of the Committee, as they went to the core of the problem. It is said that ordinary mortals have only one guardian angel. Lord Lothian's scheme had two: one entirely a guardian, restraining its cautious and timid elements in private urging the extension of the franchise on a stable and limited basis; the other, the champions of territorial constituencies, who encouraged the provincial governments in an undertone, and murmured soft counsels to their opponents in a contradiction full of grace. Of the first, extension of franchise, all that need be said is that the electorate worked on the whole according to the directions of party whips, and acted on their instructions with commendable discipline. This does not, of course, mean that the electors realised the gravity of the issues which they were called upon to decide. It would have been astonishing if they had done so. Dr. Edward Benes, President of Czechoslovakia, in his recent work on *Democracy: To-day and To-morrow*, discusses the effects of parliamentary elections on newly enfranchised peasants and workers of Central and Eastern Europe after the Great War. Most of these countries mechanically followed the stereotyped constitutions framed after the war—universal suffrage, fundamental safeguards for minorities, and citizens, etc., referendum, and all

the elements of full-fledged democracy. President Benes' verdict on these states is as follows: "In many states the masses of peasants and workmen now entered political life for the first time. In others illiteracy was widespread among the population, and political education almost non-existent. The social and economic standard was frequently so low as to be quite incomparable with that of the Western European democracies. Great masses of people were completely unprepared for the political conduct of their own affairs." It would be an affectation to deny that the mass of the Indian voters have had greater political education than some of the races of Eastern Europe, such as Ruthenians, who were enfranchised after the Great War. I have—we all have—faith in the capacity and intelligence of our voters, and it will be generally admitted that the new electoral machinery came through the ordeal creditably. The voters themselves showed the liveliest interest in the elections, and acquitted themselves creditably at election time. On the other hand, a feeling has been created among certain sections that it was a mistake to organise all the constituencies on a territorial basis, and it would have been better if the experiment of functional representation had been introduced in some selected areas. There is undoubtedly a reaction against the territorial system, but it would be hazardous to conclude that this reaction is either general or forceful. It is limited to small circles, and it cannot really be said that any organised party has committed itself to this proposal. Intelligent observers of the traditional electoral machinery and the normal territorial constituencies feel that the organisation of all the constituencies on a territorial basis was a mistake, and it would have been better for the stable development of Indian politics if experiments had been made in functional representation. I dealt with guild socialism in an early part of this series, and referred to functional representation as the only valuable contribution of guild socialists to political thought. I cannot work out the details of this theory here, as it will take me too far a field. The Hyderabad State has recently applied this principle to a proportion of constituencies constituted in accordance with its new constitutional scheme. Functional representation will, I am afraid, be difficult to work in India and I am by no means certain if it is feasible. But it is worth trying in a limited sphere. It is difficult to

assess the value of this experiment, as sufficient time has not yet elapsed for a thorough study of its working. I am afraid it will be difficult, if not impossible, for organised political parties, or for their whips, to agree to this change. To the professional party organiser, important electoral problems settle themselves, while un-important problems are un-important, and may be safely ignored. To him, reality is relative and never absolute; he believes in gradations, in grey zones, and he develops a slightly contemptuous disbelief in all proposals for reform of electoral machinery, and a certain narcotic quality thus pervades his viewpoint. His specialized vanity impels him to have a masonic feeling for wire-pullers and party managers in the rival organisations and for the maintenance of *status quo* in matters of election. However, my aim in this series is to enable young Indians to study these practical problems of political technique not as a football match in which one is tempted to take sides, but as a scientific discussion in which one is expected to weigh evidence. My proposals, therefore, are two. In the new constitution that will be framed after the war, the Cabinets must be formed on the Swiss model. I recognise that it will fundamentally alter the basis of the parliamentary system. The essence of the system is the responsibility of the executive to the legislature, and it is clear that in such a system, the Cabinet will not resign even if the legislature passes a vote of censure on unimportant, and, in some cases, on important measures. All that need be said here is that the Swiss system postulates not merely a definite majority for a Cabinet that claims power and authority in the legislature, but also a spirit of accommodation and a readiness to respect the prejudices and sentiments of the minority and an observance of the elementary law of fair-play. A mechanical majority, operating at the behest of a caucus which issues its *ukases* a thousand miles away from the seat of parliamentary activity, may succeed in dominating the legislature, but it will never reconcile the minority to peaceful co-operation or constructive work for the social and economic uplift of their common motherland. When the parliamentary system is perverted, and when Cabinet Ministers, and even Governors of provinces are called upon as they were called upon in the C. P., to act on the orders of a caucus of two or three "bosses," who, though utterly unknown to the constitution, wield dictatorial powers, the time has come for

a thorough examination of the system. The evils of the new technique are recognised by all impartial men, and they formed the subject of acid comments at the time by all intelligent and shrewd observers of this political melodrama. Finally, I am convinced now, as I was in 1929, that there are certain fundamental safeguards which should not be abridged, altered or repealed by any legislative body in India. These safeguards relate to the culture and religion of minorities and special interests. They should be incorporated in the Constitution, and should be ultimately referred to the Federal Court for adjudication, if they are violated by any legislature or any other organisation in India. The Simon Commission regarded such a provision as impracticable, and the present constitution without specifying any safeguards, entrusted the Governors and the Governor-General with the duty of preserving such rights. That the Governors were not able to enforce them is well-known to all. I do not think it will serve any useful purpose to discuss the reasons for their failure to implement this provision of the Act. They were placed in an impossible position by the Act and could not really be expected to act against the advice of their constitutional advisers, *viz.*, the Ministers. On the other hand, it must also be conceded that the aggrieved party spoilt their case by over-stating it, and exaggerating the hardships to which they were subjected.

65. Chances of Framing A New Constitution

During the last twenty-two years, immediately after the inauguration of Montagu-Chelmsford Reforms, India has been busy framing her constitution and preparing herself on the political plane for Dominion Status. This has, indeed, become her chief industry, though it is not meant for export and is intended for internal consumption. In the first session of the Legislative Assembly held in 1921, an important debate took place on constitutional reforms. From that time to the present day, there has been no visible diminution in the vigour of her dialectical ability and it has gained momentum during the last years, and achieved formidable proportions in 1930-33. If we compare the debates and discussions that took place in France in 1789-91 on the French Constitution with those in which we have been

continuously engaged during the last twenty years, we shall find that India easily leads the test. It is, of course, true that these labours have not borne any fruit, so far. But we need not despair, if we remember that the sun shines on the just and unjust alike, and constitutions too have their moulting time. Ours seems to be moulting at the present. The last eleven years have witnessed increased interest in these problems. Mr. Amery, the Secretary of State for India, made an important announcement in the House of Commons on April 22, this year, in which he formulated the view of His Majesty's Government on the new constitution which will be framed after the war. I cannot discuss these proposals here, as it will take me too far. All that need be said is that the Federal scheme has been suspended, and as there is little likelihood of its resurrection, the provinces are hanging like a wet blanket in the air, while the Princes are now free as the wind to do as they like; while British India can either busy herself with communal strife, or again engage herself in the labours of Sisyphus, and betake herself to constitution-making. The suspension simplifies the problem to a certain extent. To those, however, who have studied the Indian situation clearly, it has now become much more difficult.. The two communities have now become two "nations"; a theory has now become a manual of action for millions of Muslims; and political contact between the two chief political organisations is literally nil. The Round Tablers cannot be blamed for not possessing that second sight which anticipates and reads the future. It is said that they had lived together in London as in a sweet-meat box, and had indulged in elaborate courtesies and chiselled phrases. Some critics go further and state with something of a sneer that such discussions served to make these incomplete men of action accomplished moralists. The more audacious critics go further and assert that it is now nearly two years since the Indian Federation died, but the Round Tablers do not want any one to know that it is dead and buried. I do not think it is necessary to deal with such criticisms, as they are based on a complete ignorance of data, and grossly misrepresent the aims and objects of the Act of 1935. All that need be said here is that the work of framers of the new constitution, who are called upon to frame a new scheme, will be one of appalling difficulty. Frankly, I do not envy them their task, and I cannot speculate on

the manner in which it will be discharged. Unless the two organisations are brought together by a common danger, which threatens the existence of this noble land—and may she be spared such a danger as long as possible—the present stalemate must continue. The only suggestion which I can make here is that in the new scheme the old conception of federation must be radically changed and the new federation must be transformed into a confederation, if powerful provinces with their deeply-founded individuality are to be reconciled. The mistakes made in the Act of 1935 should be rectified, and a constitution should be devised that will reassure all the powerful elements in India's population. Rigid adherence to the stereotyped formulae of British parliamentarism should be given up and provisions of the new constitution should be framed in the light of the actual working of the Constitution in the years 1937-40. The conception of Cabinet solidarity and unity, which has been slavishly imitated from England, should be modified, and composite Cabinets should be formed not only in the provinces, but also in the centre. I feel that it is due to the readers to state what my personal opinions on the basic problems are. I have not swerved an inch from the position I took in my *Note* to the Simon Commission in 1929 that fundamental safeguards for minorities and special interests should be incorporated in the Constitution itself and not left to Governors. I feel that composite Cabinets are vital to the peace of India. While I am, and have been, strongly of the opinion that no scheme of the Constitution can succeed which does not regard federation as its sustaining pillar, I feel that the recent events ought to convince every one except the fanatics that the federation must give complete autonomy to the provinces, and its character should be transformed. It should be a confederation in which autonomous provinces shall feel perfectly safe and independent. I cannot work out the details, as this is not the occasion for a detailed examination of these proposals.

66. India and the British Commonwealth

I started my public life in the U. P. Legislative Council in 1924 under the inspiring leadership of my revered political *guru*, the late Mian Sir Fazli Husain. From 1924 till his death in 1936, I regarded myself as his humblest and most insignificant follower.

Sir Fazli combined realism with vision and judgment, and by his work and character proved himself one of the greatest builders of New India. My faith in the British Empire has remained unshaken, and I believe now, as I did in 1924, that the future of this country is bound up with the future of the British Commonwealth of Nations. If India is granted Dominion Status of the Westminster type, she will be a source of incalculable strength to the Empire. I am old-fashioned enough to believe that India can achieve her greatness by remaining a part of the Empire, and the "independence" which certain sections demand will land her into infinite trouble with her powerful and virile neighbours, and she will fall an easy prey to the appetite of her jealous rivals. Unseen by us, India is preparing herself for a great role in the immediate future. She is really in moulting, and when she gets a new shell, after the present war, she is destined to astonish the world. Mr. Winston Churchill applied this phrase to England in June, 1940. With slight changes, the phrase can be applied to India as she will emerge after present War. I quote the following from Maurois in his work, entitled *The Battle of France*:

"Have you ever studied the habits of the lobster"? said Mr. Winston Churchill (to Maurois). "There is a time in a lobster's life when she loses her shell. She secretes a new one pretty quickly—but while it is hardening, the lobster is vulnerable. What is the lobster's foreign policy at this time? He goes and lives in a hole in a rock, avoids every combat and waits until his armour is once again strong enough to protect him. England is, owing to imprudent ministers, at the present time moulting. I, and a few friends, are working to restore the shell, but it is still very soft. That is why we are living in a hole. You may rest assured that it will not be for long." India too, is moulting, but I am convinced that when her new shell is complete, she will emerge, fully equipped and well-protected, to take her place as an honoured and equal partner in the British Commonwealth of Nations.