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Modern Forms of Government

A COMPARATIVE STUDY

BY

MICHAEL STEWART
MA, MP

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To my wife

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CHAPTER I

Introductory

WE live in one world. The discoveries of scientists and the policies of governments in every continent affect the lives of their fellow-men elsewhere, and are speedily reported over the globe. In the wake of this unity follows uniformity. In some regions men still scratch the earth with wooden ploughs or seek to defeat smallpox by magic; but they live under governments which are planning the importation of tractors or the establishment of a medical faculty in the newly created university. Mankind has accepted science and recognized the need to model his forms of government in such fashion that scientific knowledge can be applied and disseminated. Government is older than science; it is moulded not only by rational consideration of modern needs, but by ancient beliefs and powerful emotions. Yet a first rapid glance at the many forms of government now in existence suggests that although they differ, as the design of one aeroplane differs from another, they are, like aeroplanes, constructed with regard to common principles, and capable of being classified, compared, perhaps judged as better or worse by reference to some common standard. In this situation political science has developed a mode of thought and a glossary of terms with world-wide application.

This apparent similarity becomes more striking when we examine some of the terms most frequently used. All men today, from the most sophisticated city-dweller to the members of wandering tribes, are the subjects of some *state*: the only exceptions are those unhappy 'stateless persons' whose condition is the result of war and upheaval, and whose earnest desire to find some state which will accept them as subjects is proof of the universal acceptance of the idea of organization by states. The special characteristic of a state, which distinguishes it from a church, a political party or other voluntary organization is its assertion of *sovereignty*. That is to say that on the one hand it claims from all those living within its borders a legal right

to absolute obedience—though, out of regard for liberty, morality and common sense it may well refrain from exercising this right to the full. On the other hand, in its relations with other states, it claims equality of status and a freedom of action limited only by such treaties and agreements as it has voluntarily made. These agreements are frequent and may be far-reaching. The North Atlantic Treaty Organization, for example, commits its members to a common defence policy, and arrangements have been made whereby the troops of one member, quartered on the soil of another, are subject in some respects to their own laws and courts and not those of the state in which they are living. Such voluntary surrenders of sovereignty indicate that mankind is beginning to find the system of sovereign states inadequate to a unified world, and is searching for a new method of organization. This development, however, lies in the future; for the present we live in a world of sovereign states. The United Nations Organization recognizes their legal equality of rights, and the whole of diplomatic procedure is based on the assumption that states, whatever their differences, are, like human beings, members of the same species.

If the rights of sovereignty—the right to make laws, to carry them out, to represent the State in world affairs—are to be exercised they must be entrusted to particular persons. The rules determining how these persons shall be elected or appointed and what specific powers shall belong to each of them form the *constitution* of the state. Although a distinction is sometimes drawn between 'written' and 'unwritten' constitutions, all constitutions are in fact a mixture of written law and unwritten custom. The written constitution of the USA requires that the President shall be chosen by electors, themselves elected by the people of each state; in fact, the electors are ciphers and the choice is made directly by the people. Conversely, in a country as attached to custom and tradition as Britain, a large part of the constitution is now written law. A more useful distinction can be made between constitutions which, like the British, can be altered in the same manner as ordinary law and those which are inscribed in a document separate from the ordinary law and can only be altered by a different, usually slower, process. 'Rigid'constitutions of this type are a common feature in countries otherwise so different as the USA, the USSR, the nations of the British Commonwealth and most European countries. Most of the states now in existence have been either created, or re-created after the upheaval of revolution or invasion, in the last two centuries. Starting their lives thus, at a time when economic and social life were so advanced that certainty

of law and precise definition of power was a necessity, they found a rigid constitution essential as a foundation for their politics.

Another feature common to most modern states is that they contain groups of people who differ, if not in race or language, at least in history and feeling. Switzerland has her four languages, Yugoslavia her six national groups, even France her German-speaking Alsatians. In the effort to secure unity without forfeiting the loyalty of particular groups, each state must determine what degree of *decentralization* it will permit. In some states—e.g. West Germany, Australia—the structure is *federal*: that is to say, the component parts of the State have rights which are stated in a written Constitution and can only be altered by special process. In others, such as Britain and South Africa, the structure is *unitary*; the provinces or counties into which the State is divided are the creatures of the central government and their powers and boundaries can be altered by it in the ordinary process of law. The central government of a unitary state may well decide, out of respect for local feeling, to practise a large measure of decentralization; the present tendency in Britain is to decentralize the administration of Scottish and Welsh affairs.

The phrase 'central government' raises another universal problem. A government is in fact a group of individuals empowered to exercise the rights of sovereignty in the state. Yet nearly all modern states claim, with greater or less justification, that final sovereignty lies with the people and that the individuals composing the government can from time to time be changed if the people so wish. The citizen is supposed to have both a duty to be loyal to the state—to obey its laws and help preserve its independence—and a right to change the government. The administration of modern states, moreover, is so complicated that it cannot be conducted without some degree of permanence. When the individuals who compose governments change it must be made clear that the newcomers are as fully entrusted with the rights of sovereignty as their predecessors were, and there must be people who can carry on the day-to-day work and advise the new members of the government. We find, then, in all states, a body of *permanent officials*—civil servants, magistrates, officers in armed forces—who form a kind of state machine, ready to be worked for whatever purposes the government may decide. This distinction between permanent officials and governmental or political chiefs is less marked in newer countries where the civil service has had less time to establish itself as a strong and united profession, and in one-party (e.g. Communist) countries where the theory is that ministers in government, officials serving under them, and the whole

people are united by a common belief as to the purpose of government. Yet both in the USA and the USSR we notice a large body of persons who continue their work as professional administrators while the struggle for political power, waged either by open elections or secret intrigue, goes on over their heads.

The distinction between state and government is further emphasized by the designation of a particular person as *head of the state*, to whom outgoing members of governments will hand resignations, by whom new governments will be appointed, and in whose name foreign relations will be conducted. The peculiar nature of this office is made most plain in monarchical countries. The monarch, because of the glamour which attaches to the crown, can serve as a personal focus for that loyalty of citizens to the community without which no state can survive. Because the position is hereditary, the question who shall hold it is not the subject of political argument; the distinction between the permanence of the state and the liability of members of governments to be changed, is clearly set forth. Such an institution, however, can only survive if the monarch is prepared, like a permanent official, to co-operate with successive governments. Monarchs who have tried to dominate rather than co-operate, to become heads of governments as well as heads of state, have found that, like governments, they can be turned out. Once monarchy has fallen it is not easy to re-establish; the spell is broken, the glamour tarnished. Most states today, therefore, are republics; yet they find it convenient, both for ceremonial and practical reasons, to maintain the institution of head of state. Being elected and not hereditary, he cannot be entirely separated from political argument. The dilemma is resolved either, as in the USA, by having a President who is both head of state and head of government, frankly recognized as a political figure, or, as in the French Fourth Republic, by so limiting his powers that he becomes an exceptionally dignified permanent official. The mystical element of royalty—the attempt to express in a person or family the sentiment which unites the community—is absent: impersonal symbols—the Stars and Stripes, the Soviet Fatherland—replace the wearer of the crown.

The powers wielded by heads of state in name and by governments in fact, are usually classified as *legislative*, *executive* and *judicial*. The US Constitution prescribes a precise distinction of these powers, allocating them to different groups of people and, in particular, distinguishing Congress which makes laws from the President and his appointees who carry them out. British Cabinet Ministers form part both of the executive and the legislature. Yet, while each country has

its own method of arrangement, the idea of this threefold distinction is vital to an understanding of government. Taxes cannot be collected or public services run unless there is a body of persons to execute these duties; but their work will be chaotic unless they observe a set of rules or laws laid down for them; and as laws become numerous and complicated the need arises for judges and lawyers who interpret them and apply them to particular cases. A parent, for example, may object to sending his child to the school in his village because it is dilapidated; the local education authority and the Ministry of Education, which are parts of the *executive* may be able to remedy this complaint. Alternatively, the parent may claim that he will not send his child to that school because there is another school which he prefers and to which, without unreasonable public expenditure, his child could go; then it will be for a court of law, part of the *judicature*, to determine how the words of the Education Act, 1944, 'unreasonable public expenditure' apply to this case. Finally, he may say that his child is over fourteen and that he doesn't think children ought to have to stay at school till they are fifteen. This argument, however, will avail him nothing unless Parliament, the *legislature*, is prepared to alter the law. Similar examples can be taken from any department of social life and can be paralleled in all countries. When, therefore, we examine the constitutions of different countries we shall find that this idea of the three powers of government is a convenient instrument for analysis and comparison.

There is also a common pattern in the structure of the executive branches of government in different states. In each we find some departments or ministries concerned with *power*—e.g. police, armed forces, regulation of local authorities, some with *prosperity*, e.g. finance, trade, transport, and some with *welfare*, e.g. public health and social insurance. The comparative importance of these political, social and economic groups of ministries will vary according to the ideology of each state; but there is no country in which all three groups are not substantially represented. To co-ordinate the policies of these departments there will be a group of persons called a *cabinet* or council of ministers; it will contain some ministers in charge of departments and some, usually senior, ministers without specific responsibilities.

Sovereign states, constitutions, degree of decentralization, the state machine and its head; the executive, legislature and judicature; the political economic and social groups of ministries in the executive, and their co-ordination by a cabinet—these terms provide a framework for the description and comparison of the politics of nations.

What accounts for so much formal similarity when the beliefs and ways of life of peoples vary so greatly? In the *first* place, there are certain strong desires common to nearly all human beings; and governments, if they are to survive, must seek to satisfy these desires. Men desire security; adventurous individuals may climb mountains or cross oceans on rafts, but the perils here are those which they have chosen, not those thrust on them by the wickedness of others or the incompetence of governments. The intrepid explorer will be as anxious as anyone else that his house should not be burgled—perhaps more anxious when he thinks of his precious equipment and records. Security is desired as a condition not only of happiness but of activity and planning. Men desire also to express and assert themselves, whether by rising to high positions and obtaining large incomes, or by creative art, or more simply by a well-cultivated allotment. Akin to this is a desire not to be cheated or bullied—a demand for justice for oneself which may in the process of civilization develop into concern for justice to others. Again, and perhaps more hopefully for the future of mankind, men desire to belong to some group whose members are linked by affection and mutual service. This is, in fact, a desire to be wanted and loved which expresses itself not only in family life but in other and larger groupings. These universal motives require all governments to attempt the same tasks—to provide for their subjects defence against external enemies and internal disorder, some degree of economic security, and opportunity for individual achievement and social life.

In the *second* place, not only are the tasks identical, but the growth and spread of scientific knowledge provide all governments with similar instruments for performing the tasks. The development of new weapons of war obliges all Ministries of Defence to concern themselves with stores of fissile material and with the steel and electronics industries. The demand for economic progress has to be met by the encouragement of transport and industry; governments, which, until comparatively recent times, were concerned chiefly with the needs of a pastoral or peasant population, have now to consider the welfare of a growing body of industrial workers. Nor is it only the natural sciences which have this unifying influence on the practice of governments. The study of statistics and of population problems enables and encourages governments to introduce family allowances, old age pensions and various forms of social insurance. An appreciation of the importance of psychology, together with the growth of literacy, leads governments to consider how their peoples can be informed and influenced. The vast range of publications put

out by Her Majesty's Stationery Office in Britain, the showing, in an African village, of a film dealing with hygiene, the techniques of mass-propaganda practised by dictatorships, all bear witness to a world in which persuasion, instruction and exchange of ideas exercise an increasing influence.

From this improvement in means of communication springs a *third* unifying factor. Governments and peoples are so well aware of what their fellow-nations are doing that a rivalry in achievement and propaganda is promoted. Ideas, slogans and policies which appear to be popular in one country are consciously imitated. In 1928 the USSR started its first Five-Year Plan for the development of its economy. Other countries, while not accepting Communist theories, realized that some of the ills, notably unemployment, from which they suffered, were connected with the fact that there was insufficient foresight and conscious social direction in their economic policies. It became fashionable for anyone who had a policy, whether for the improvement of the railway system, the reduction of unemployment or the raising of the standard of life in a colonial territory, to depict it as a plan to be carried out in a term of years. There was more in this than verbal imitation; it was a recognition of the need for greater social control in economic affairs and an assertion that the benefits to be derived from planning could be obtained in non-Communist as well as Communist countries. Conversely, in the years when Hitler ruled Germany the democratic countries were led to assert more emphatically the merits of democracy: by 1936 we find Stalin introducing the new Soviet Constitution with the claim that it embodied what was best in the Western Democracies, and after the war the Communist governments in Eastern Europe are careful to describe themselves as 'People's Democracies'. The word 'democracy' had become fashionable and the claim was being made that the real essence of democracy could, in some way, be enjoyed as much in a one-party dictatorship as in countries which allowed legal opposition and free discussion. In a more limited and perhaps more practical manner Turkey, when transforming herself from a large decrepit Empire into a small but efficient state, studied the French system of administration and the Swiss system of law. The wide measures of social reform introduced in Britain after 1945 were collectively labelled the 'Welfare State'. This phrase, and the ideas which it connotes, obtained widespread approval, sometimes enthusiastic and sometimes grudging. Countries with slender social services became anxious to show that they realized that all states should possess at any rate some of the characteristics of a 'Welfare State'.

Those Americans who sought to persuade their more individualistic fellow-countrymen of the need for social reform drew attention to the phrase in the preamble to the United States Constitution which describes one of its objects as the promotion of the 'general welfare'.

These tendencies have increasingly obliged all states to pay at least lip-service to the same standards of value; all governments claim that they rule with the approval and in the interests of their subjects, giving them protection, security, opportunity, justice and welfare. Nor is this entirely lip-service, for even the most cynical government includes in its structure departments purporting to provide at least a colourable imitation of these benefits. Bodies like the International Labour Organization and the social and cultural offshoots of the United Nations bring the work of these departments into comparison with each other and establish standards by which they can be judged. This universal desire of governments to justify themselves to their own, and other, peoples partly accounts for another common political feature—the existence of elections and political parties, whether they be the single parties in dictatorial countries or the rival parties found elsewhere. Hostile critics might argue that in all countries elections and parties are devices for giving the government the appearance of reflecting the popular will; but this is not the whole truth. A change of the party in power in Britain does involve material changes of policy; and even in a state where only the Communist Party exists, it does not only seek to direct public opinion into the required channels: it strives also to acquaint itself with that opinion and to advise the government, accordingly, whether to emphasize or relax particular items of policy. All governments desire to influence public opinion and know that they must be influenced by it; parties and elections are a mechanism through which this two-way process can be performed.

We may notice these formal, and more than formal similarities between states as a student of anatomy may notice structural principles common to all vertebrate creatures, whether men or frogs. Yet a man is not a frog, and if the similarities between states make it possible to begin the process of comparison, we shall not carry the process far without discovering striking differences. Nearly all states claim to be 'democratic'; but as soon as they start to produce evidence in support of that claim it appears that they attach very different meanings to the word.

Some of the differences between states can be readily ascribed to well-known facts of their geography and history. The USA is a vast country whose regions enjoy different climates, each with its par-

ticular effect on the regional economy; before the country became an independent state, thirteen different communities, British colonies, with their own constitutions, ways of life and mutual jealousies, already existed. It was to be expected that such a state could only hold its component parts together by guaranteeing their rights under a federal constitution. Switzerland, though far smaller, was composed of communities separated by mountain barriers, diverse in race, language and religion, and seeking unity with each other mainly as an alternative preferable to subordination to a more powerful neighbour; here again, a federal constitution reconciles the need for unity with the love of local independence. In England we have a country of moderate size with no great natural barriers or marked differences in race or language; there was therefore no compelling reason for adopting the greater complexities of government which federalism involves. Her Norman rulers, moreover, anxious to strengthen their hold, worked to increase the power of the central government; and by the dates at which England absorbed Wales and united with Scotland the unitary system was firmly established. From the 16th to the 20th century Britain, with the sea as her obvious frontier and sure defence, was less in dread of invasion than many nations, and her people could afford, by argument and conflict among themselves, to hammer out a policy in which the powers of government were restrained and the rights of the individual protected. Russia, with no clear natural frontiers, subject in early days to Swedish, Polish and Tartar invasions, came to seek her safety in a powerful central government whose authority should be beyond question.

In more recent times Britain, and many European countries, found themselves with their crowded populations, limited resources and old-established industries, exposed to the vagaries of international trade and the perils of unemployment. In such circumstances a man might well be unable to provide for himself and his family for reasons quite outside his control; it was therefore increasingly admitted that the community has a duty to provide social services. In the USA there were huge resources, not yet fully assessed; new industries were constantly appearing, new lands being cultivated; the age of the pioneer—the man who surmounts difficulties by his own effort and acquires wealth by his own qualities, whether good or evil—was fresh in the memory. In such an atmosphere the idea could more firmly persist that it was for the individual to provide for himself and that the concept of a 'Welfare State' was a sign of weakness of character.

The connection, however, between forms of government and political ideas on the one hand, and major geographic and economic facts on the other, should not be over-simplified. The human mind does not, like a chameleon, immediately take its colour from its surroundings. Men's political ideas and behaviour are affected not only by present facts but by ideas and phrases which have been handed down to them by their ancestors, which are embodied in their literature and their proverbs and repeated in their newspapers and broadcast programmes. People who are completely ignorant of the text of Magna Carta may firmly believe that it is a proof that English people love and deserve freedom; and a belief of this kind is a fact, affecting present-day behaviour, whatever historians may think of the basis on which it is founded. We shall find that forms of government differ in response to the different *ideologies* of nations—an ideology being a set of beliefs and ideas which incline a nation to accept certain reforms and proposals and to reject others. Ideology is a product of present needs and facts, and of beliefs, more or less accurate, about the past.

Particularly influential in shaping a nation's ideology are the institutions and forms of government it has created at the crises of its history. When men have faced some great peril and survived it by thinking and acting in a particular way, the ideas and actions of that time are regarded with especial respect by later generations. When men are tolerably satisfied with their lot they do not, as a rule, make great changes in their institutions in the hope that by so doing they will become better off; it is when they are aroused by danger or made indignant by misgovernment that they exert their political energies to the full. We can therefore get some clue to the ideology of a nation by looking at the circumstances in which the foundations of its present form of government were laid, and by asking 'Against what evils were the citizens protesting and with what danger were they concerned when they laid these foundations?' The men who made the English Revolution of 1688 had experienced the rule of Cromwell and of Charles II and James II; they concluded that their power, their rights, their property and even their lives were in peril if the King's power became absolute or if old traditions were destroyed in the ruthless manner of Cromwell. They were protesting against both despotism and iconoclasm; they therefore created a constitution which preserved traditional forms and made the King's government subject to Parliament and the rule of law; and, from that day to this, one of the most effective ways of discrediting any party or policy is to suggest that it would involve either despotism or a

destruction of traditions. The French Revolution was, at least in part, a protest by the industrious and energetic against the denial of opportunity and crippling taxation which were imposed on them by the privileges and extravagance of the aristocracy; and the difficulties which beset a modern French government trying either to impose or collect adequate taxation, are an echo of that historic protest. When the American people won their independence from Britain they were in protest against monarchy, against being governed from a distance by people who did not know their problems, against interference with their trade and against having their lives injuriously affected by the conflicts of European nations. In American eyes, therefore, good government would be republican, federal and decentralized; it would shrink from controlling the economic activities of individuals and from making what Washington called 'entangling alliances' with other nations. Few nations, however, have grown so quickly or been called in so short a time to world-wide responsibilities as the United States, and these experiences have substantially modified their early beliefs; nevertheless, any American government which wants to extend government control of economic matters or to enlarge the international commitments of the USA knows that it must walk warily, bearing in mind the old and powerful emotions which it may arouse.

The 20th century has seen Communist revolutions which voiced, though necessarily through the mouths of educated leaders, the protest of the poor, the propertyless, the backward and ignorant. They condemned the old order not so much because it was autocratic or aristocratic, but because it was plutocratic. In the Communist view, all non-Communist governments, whatever their outward form, were devices to enable a particular class to keep in its own hands the ownership of land and other sources of wealth, and thereby to dominate the community. The merits of any form of government will be assessed by a Communist not with regard to the existence of voting rights or freedom of discussion, but with regard to the ownership of land and capital.

Caution is necessary when we speak in this manner of the ideologies of different states. In fact, it is not states which think and have ideas, it is individual men and women. If we say that America is individualistic and Britain fond of tradition we are using a kind of shorthand to say that these habits of mind are found in many Americans and many Britons, respectively, and are, on the whole, more common among them than among the people of some other nations. There are in every country people whose ideas differ from or conflict with the

generally accepted pattern—though in some countries these dissentients have to keep silent. Where, however, they are allowed to express their views they may well, in the process of time, modify the national ideology; one of the advantages of freedom of speech is that it helps a nation to modify its political habits to meet changing circumstances. Ideologies are, indeed, subject to continuous change; the ideas which were deliberately and precisely stated in a time of revolution are transmitted from one generation to the next; those parts of the creed which prove less appropriate to new circumstances are quietly forgotten; new ideas are added, framed in language which makes them acceptable; an aggressive dogmatism is transmuted into a frame of mind. Since the Communist revolutions are the most recent, Communist ideology is more precisely formulated and more fiercely asserted than its rivals; but the USSR has already shown, in its changes of foreign policy, that it can make moves of expediency and find ideological justification for them thereafter just as a medieval ruler could, in extremity, find theological justification for an alliance with the Turk against his fellow-Christians.

Yet, when all qualifications have been made, it remains true that the forms of government and political behaviour of a nation are greatly, though not wholly or always consciously, influenced by a set of ideas inherited from a time of revolution. If, therefore, we want to compare the forms of government of different countries, we must remember that each can only be properly understood in its own setting. The apparatus of government is sometimes called a 'political machine', and when we look at the delicate interaction of the various parts and observe how ideas can be put in and legislation turned out, the metaphor seems apt enough. The danger of such a phrase is that it may lead us to suppose that political devices can be transplanted from one country to another as easily as machines can be exported; we may also fail to notice that a particular political device may have a completely different significance in different countries. Take, for example, such a question as 'Is it desirable for a legislature to be composed of one or two houses?' There are some general arguments which may be advanced on either side; an impetuous majority in one house may, if unchecked, ignore the real wishes of the people; if one house is less democratically chosen than the other it may obstruct a measure that is genuinely desired by the people; a conflict between the houses may compel a search for reasonable compromise or it may cause delay when speedy action is essential. One does not proceed far with the argument, however, before one discovers that the real question at issue is a different one in each country: in the USA one

would ask what were the results of giving great influence over foreign policy to a Senate in which the people of Wyoming had equal representation with the people of Pennsylvania; in Britain one would be examining an institution which gives special weight to the wealthier section of the people, and to the Established Church; in the USSR one might conclude that the powers of both Houses were so limited that the question was of little practical importance. Again, an examination might be made of the methods employed by various countries for recruiting their civil servants. In this inquiry there would be many considerations of universal importance, for in all countries people who think of entering this profession will have regard to their possible salaries, status, prospects of advancement and rights of pension. Yet the description of the plan adopted in any given country will only get its full significance when it is set against the background of that country's educational system and social structure.

In this book, therefore, the study of forms of government will be made country by country, so that those forms can be seem as part of the country's whole political life. Where a number of countries form a recognizable group, as do the nations of the British Commonwealth, certain common features may be noted and general conclusions drawn. Finally, the assembly of facts may enable us to discover some general principles applicable to the whole field of human political behaviour.

So far, we have considered the scope and method of the study of comparative government. What is its purpose? In the first place it enables us to interpret more accurately the course of events in foreign countries. If the only political forms with which we are familiar are those of our own country, we are likely to be misled by superficial resemblances of foreign institutions to our own. For example, an election in the USA may give Congress a Democratic, in place of a Republican majority; but until we have considered the attitude of the President and the influence of certain prominent persons in both parties, we cannot judge whether the change is likely to be as significant as a change of the majority in the House of Commons.

Secondly, a study of foreign institutions may help us to a better understanding of our own, and even enable us to improve our practice. We must approach this matter with caution since, as we have seen, political institutions cannot, because they work well in one country, be transplanted to another with certainty of success. A study of foreign institutions is not likely to present us with a model ready for use in our own country; but it may clear our minds of

prejudices; if it does not provide answers it may suggest the questions we ought to ask about our own methods. There has been in recent years a growing dissatisfaction with the working of English local government. If, in the search for improvement, we look at the French system we notice at once that much local administration is in the hands of *préfets*, officials appointed by the central government. Our first reaction is to reject this system as repugnant to English ideas of local freedom. Then we begin to examine more closely, asking in exactly what respects do English locally elected councils enjoy more freedom than their French counterparts? We may find that, in England, the influence of inspectors, auditors and Ministerial circulars, and the increased financial dependence of local authorities on the central government has made local freedom less real than we supposed; we are driven to ask how far local freedom can be reconciled with the needs of a complex thickly-populated country. We cease to think in generalities and ask what are the things which we want local authorities to be free to do, and what sort of interference do we want them to be free from? In this frame of mind we are more likely to discover how ideas and principles to which we are traditionally attached can be made to work in a modern setting.

There remains a third and more profound motive for the study of comparative government. In this chapter there have been set forth the many apparent similarities in the political structures of different countries; and, in contrast, the different national ideologies which affect political behaviour. The question arises, are different political forms simply different ways, each appropriate in its own nation, of doing the same thing?—or are the different political systems seeking to produce fundamentally different results? If the former, what is it that they are trying to do? If the latter, can we judge as better or worse the different results at which different systems aim? The ultimate purpose of our study is to answer the question, what is politics for? Aristotle held that the 'polis'—that is to say, political life and organized government—serves first to make life possible, and then to make it good: but his definition only raises the further question, what is the good life? It is not a question to which any complete answer is likely to be found; but as we strive towards the answer we come nearer to understanding the nature of man, the purpose for which he was created, and the contribution which politics can make towards the fulfilment of that purpose.

CHAPTER II

The United Kingdom

THE constitution of the United Kingdom was not established by any single action or at any precise date; no one document contains it, nor is any special procedure, distinct from the ordinary process of law-making, required for its alteration. It has grown from the political institutions of the Anglo-Saxon people who invaded Britain in the 5th and 6th centuries; some historians even trace a connection between modern British democracy and the belief, held by the Angles and Saxons when they were still in their German homeland, that the will of a ruler should be limited by tribal custom and exercised in consultation with his people. When, however, the several Anglo-Saxon Kingdoms had been created in England, the wars which they waged first against each other and later against Danish invaders, compelled them to adopt a form of government in which the power of the King, as war-leader, was increased. The efforts of King Alfred to establish a peaceful way of life for Angles, Saxons and Danes in one country led to a study of the principles of law, and a number of Danish customs were adopted. Yet the Kingdom was still loosely knit when in 1066 it fell into the hands of William the Conqueror and his French-speaking followers. William and his successors had to create a form of government sufficiently centralized and authoritarian to ensure their own retention of power, and sufficiently in accord with former custom to be workable. For this purpose they made use of English, Norman and French institutions, adapting and modifying to meet the needs of the moment. The process was not always smooth or peaceful, and in successive crises, such as that leading to the formulation of Magna Carta in 1215, the group holding power at the time found it expedient to state explicitly what were the powers and duties of Kings, nobles, churchmen and other classes in the community.

From these various sources there flowed a constitution whose

outstanding features were: (1) a monarch, from whom all lawful authority was derived; (2) a respect for custom, increasingly embodied in law, and a conviction that all authority, even that of the monarch, should be exercised in accordance with law; (3) some kind of assembly, to represent the powerful elements in the realm and to uphold—and, though with caution, to modify—the law; (4) a conception of the community as composed of classes or 'estates' with prescribed rights and duties; (5) an empirical approach to government, displayed in the capacity to borrow, adapt and blend foreign and native institutions. This last quality, the product of Norman-Anglo-Danish conflicts and compromises gave the constitution a peculiar vitality, and has enabled what was in origin a tribal and feudal structure to develop into something capable of meeting the successive needs of the Renaissance, the Industrial Revolution and the 20th century.

A critical stage in this development was the reconciliation of three elements in the constitution which were liable to conflict—monarchy, the rule of law, and the claims of the representative assembly. This was finally achieved by the Revolution of 1688; it was then established beyond doubt that the monarch owed his position to the will of Parliament, that he must act with the advice and consent of Parliament, and that complete sovereignty, belonged to the 'King in Parliament'—i.e. to the King giving expression and effect to Parliament's will. The country was to be governed according to laws made by Parliament and steps were taken to ensure that judges should carry out their duties as servants of the law without interference from the King or his ministers. On a legalistic, rather than an historical, view, the present British constitution started its life in 1688. It was an English creation, later extended to the government of the whole United Kingdom. Although Scotland has preserved her own system of law and of local government she remains, with England, part of a unitary state. The union with Ireland proved less durable; most of that country is now an independent republic, the six north-eastern counties remaining, as the Province of Northern Ireland, with a subordinate Parliament of its own but still part of the United Kingdom. The unitary nature of the state is shown by the fact that laws made by the Parliament at Westminster apply, unless exception is explicitly made, to the whole United Kingdom. In fact, Northern Ireland is frequently so excepted, most of its laws being made by the Parliament at Belfast; nor is it uncommon for the Westminster Parliament to make laws applying only to England and Wales, or only to Scotland.

The constitution of 1688, although Parliamentary, was not democratic. With 19th-century industrialism came the growth of a

large, articulate and increasingly influential working class. In previous centuries Parliament had survived because it had, though sometimes after difficulty and delay, so adapted itself as to be capable of including any sufficiently powerful element in the state. Successive changes had secured representation for the smaller landowners, the merchants and the middle class; it was therefore consistent with the trend of British history that 19th- and 20th-century reforms should extend to the whole adult population the right to vote at elections to the House of Commons, and should reduce the unelected House of Lords to a subordinate position.

Summarizing the effect of this long historical development, we may now describe the United Kingdom in the following terms. (1) It is a unitary State governed by a Sovereign Parliament consisting of Queen, Lords and Commons. (2) The Sovereignty of Parliament has the following effects: (*a*) the constitution is flexible, since it can be altered by Act of Parliament; (*b*) the Queen's government is carried on through ministers who sit in, and are acceptable, and responsible, to Parliament. (3) Government is carried on in accordance with the rule of law; that is to say, no one can be deprived of liberty or penalized in any way except for breach of the law and in accordance with legal process; and every subject of the Queen, whether Minister of the Crown, Civil Servant, member of the armed forces or private citizen, is equally subject to the law. It is from this principle that the liberties of the individual are derived: the constitution does not, for example, contain a positive guarantee of freedom of speech; it works on the assumption that anyone may say what he likes provided he does not give vent to such utterances (e.g. incitements to crime) as have been expressly forbidden by law. (4) This rule of law is safeguarded by the provision that judges can only be removed from office for serious misbehaviour and in accordance with a procedure requiring the consent of both Houses of Parliament. (5) The working of Parliament is such that, in the last resort, the will of the House of Commons prevails; and this House is elected by the whole adult population. Although this last principle has only been established in comparatively recent times, it is now an essential part of the whole structure; Parliament is accepted as sovereign because it is representative. In sum, the British constitution is Parliamentary in form, law-respecting in spirit and democratic in practice. We have now to examine the working of its several parts.

The Executive

Executive power belongs to the Queen and her Ministers. The

present Queen occupies the throne by virtue of rules of succession contained in the Act of Settlement, 1701, and the Abdication Act, 1936. An Act of 1689 requires that the monarch shall not be, or marry, a Roman Catholic. The succession can be altered by Parliament, provided that the consent of the Parliaments of the other nations of the British Commonwealth is obtained.

The Queen appoints a Prime Minister who, subject to her approval, chooses the remaining members of the Government. Since the laws empowering the Government to collect taxes and to maintain an Army require annual approval by Parliament, no one could accept the post of Prime Minister unless he could count on a Parliamentary majority. In effect, therefore, the Queen chooses the leader of the majority Party; and, in reference to all that is said in this chapter about the powers of the Queen it must be remembered that she uses them in accordance with her Ministers' advice. This is not to say that her part in government is purely formal. The Prime Minister's choice of colleagues and subordinates is submitted to her; she must be consulted over major matters of policy, and can require any Minister to discuss his work with her. In all these matters she may put forward her own view and even urge it on Ministers, subject to two conditions. The first is that, in the last resort, the Ministers' view prevails; the second that all such discussion is private, so that the personal views of the monarch cannot become an element in public political argument. Because of this privacy, the extent of a monarch's influence cannot be generally known during his or her lifetime; but in effect the monarch has become a permanent adviser to the Government, enjoying unique prestige, experience of successive Governments and unlimited access to information.

The Prime Minister, in forming his Government will first select about eighteen principal members who form the Cabinet. Some of these, e.g. the Lord President of the Council, hold historic offices to which no modern departmental duties are attached, while the remainder are Ministers in charge of the principal departments. The Cabinet's task is to plan the main lines of policy, to determine what legislation must be presented to Parliament to give effect to that policy and to reconcile or determine differences of opinion between Ministers. It is accepted doctrine that the Cabinet are collectively responsible for all acts of government and a Cabinet Minister who cannot bring himself to agree with his colleagues must resign. The volume of work requires the establishment of many Cabinet Committees and sub-committees and an extensive Secretariat.

The Prime Minister has also to appoint those Ministers, in charge

of lesser departments, who do not sit in the Cabinet; and, for each department, one or more junior Ministers, called Parliamentary Secretaries. In making a total of about ninety appointments the Prime Minister must keep in mind Parliamentary, national and party considerations. Some twenty members of his Government will sit in the Lords and the rest in the Commons; he must so arrange them that there is, in both Houses, some spokesman for each aspect of Government policy. The standing of the Government in the country may be affected by the exclusion, inclusion or appointment to a particular post, of someone who has acquired a great reputation. Less widely known, but equally influential, are the currents of opinion and personal loyalties within the party from which the Government is formed. To keep his party united, a Prime Minister will seek to have each important element in the party represented in the Government, to balance the claims of youth and of experience, and to avoid the appearance of having made his selection mainly from a particular clique or group.

Among the various Ministries we may notice first a political group, dealing with power and general administration. In this group are the Secretaries of State for Home Affairs, Foreign Affairs, Colonies, Commonwealth Relations, and Scotland, all of whom sit in the Cabinet. The Home Secretary is responsible for police, prisons, public safety and order, the treatment of aliens, the care of children who lack normal home life, and the operation of laws governing electors. The Colonial Secretary is responsible for the non-self-governing countries under British rule while his colleague at the Commonwealth Relations Office deals with the fully self-governing nations of the Commonwealth and with those, like Central Africa, which have nearly achieved self-government. The framing of foreign policy, the appointment of Ambassadors and their staffs, and the protection of British subjects abroad are the responsibilities of the Foreign Secretary. The Secretary for Scotland, with four junior ministers, performs for that country the duties performed in England and Wales by the departments of Home Affairs, Education, Housing and Local Government, and Agriculture. In this group also is the Minister of Defence; his department is a recent creation, exercising increasing authority over the First Lord of the Admiralty and the Secretaries of State for War and Air, who, unlike the Minister of Defence, do not sit in the Cabinet.

At the head of economic affairs is the Treasury, presided over by the Chancellor of the Exchequer. The primacy of this department, signalized by the Prime Minister's holding the titular office of 'First

Lord of the Treasury', arises from the fact that it finds the money for all departments and exercises detailed control over their expenditure. Other economic departments are Agriculture, Transport, the Board of Trade, Fuel and Power, Supply, and the Post Office. Since 1945 the nationalization of various industries has increased the importance of this group of Ministries. The general pattern of nationalization is that the industries are run by Boards appointed by a Minister and subject to his direction as to general policy though not as to detailed administration. The Minister of Labour is responsible for industrial relations, for the maintenance of full employment and productivity and for administering the National Service Acts. He and the Chancellor invariably, the Minister of Agriculture and President of the Board of Trade usually, and some of the other Ministers in this group occasionally, sit in the Cabinet.

The growth of welfare legislation, much of which is administered by local authorities, has raised to first rank the Ministry of Housing and Local Government, which combines a special responsibility for housing with a general oversight of the organization and finance of local authorities. The Ministers of Education and of Health likewise exercise control over services which are, for the most part, locally administered. The system of national insurance and the care of people disabled in war is the responsibility of the Minister of Pensions and National Insurance. This Minister is sometimes in the Cabinet, and it appears now to be regular practice to include the Ministers of Local Government and of Education in that body.

The local authorities which have been mentioned are the councils of counties, boroughs and districts elected by the citizens in each area. For each of the many services they control they are in touch with the appropriate Ministry. Since Britain is a unitary state, their powers and boundaries can be altered by Act of Parliament; in fact, by constant consultation between Minister and councillors, and between officials of central and local government, the effort is made to combine the need for some degree of uniformity with the desire for local independence.

The classification of Ministries into political, economic and social groups, which has been here adopted for convenience of description, is not a recognized part of the constitution. Attempts have occasionally been made to group Ministries and put each group under a chief or 'overlord', but it seems improbable that British government will develop in this way. The Cabinet has become accustomed to work on the assumption of the equal responsibility of all its members; and a Cabinet composed solely of 'overlords' might prove too small for

convenience, and too remote from departmental work to make sound judgments. The necessary contacts between Ministries with kindred responsibilities are secured by Cabinet Committees.

Experience sometimes reveals that a particular function could be better performed if it were transferred to another Ministry, as was the administration of the Factory Acts from the Home Office to the Ministry of Labour. Such a transfer can be effected, in accordance with an Act of Parliament, by 'Order in Council'. This phrase draws our attention to the Privy Council, an ancient part of the constitution, still important but now in the background. It was originally the chief instrument of government; all Cabinet Ministers and most other senior Ministers belong to it, and the oath which they take as Privy Councillors is the safeguard for the secrecy of government business. Since, however, membership of it is for life, it contains at any one time not only the leading members of the Government of the day, but also the chief members of the Opposition who will have held office in previous Governments, together with eminent lawyers and churchmen and others who have been 'sworn of the Privy Council' as a mark of honour. The full Council meets only at the accession of a new Sovereign; on other occasions only members of the Government of the day will attend. Many Acts of Parliament provide that 'it shall be lawful for Her Majesty by Order in Council . . .' to do this or that—e.g. to declare a State of Emergency or bring into being a new constitution for a colony. It is the Cabinet, originally an inner group of the Privy Council, which in fact wields the power so conferred. Committees of the Council are sometimes appointed, which may later develop into Government Departments; the permanent Judicial Committee acts as a court of appeal for the Colonial Empire and some Commonwealth countries.

While final responsibility for government rests with Ministers, great influence is wielded by the Civil Servants, who remain at their posts unaffected by the changing fortunes of political parties and Ministers. They are recruited by competitive examination under conditions laid down by the Treasury, and the Service has acquired a high reputation for integrity, efficiency and readiness to work with whatever Ministers are in power. We should notice also, as an important part of the State machine, the Chiefs of Staff, who advise their respective Ministers, and form, together, a committee which advises the Minister of Defence.

The Legislature

We have already noticed that the Legislature—Parliament—consists

of Queen, Lords and Commons, and that the reality of power belongs to the Commons. The House of Lords consists of 2 Archbishops, 24 Bishops, about 700 Peers whose titles and right to sit in the Lords are hereditary, and 9 Law Lords who hold their position for life, and a number of Life Peers with non-hereditary titles. This last category is likely to increase in size and importance; unlike the other categories, it may contain women as well as men. The Queen can confer a Peerage on anyone at any time, and since this power must be exercised on the advice of the Prime Minister, the composition of the House of Lords can in fact be determined by the Government of the day.

The usual process of legislation is for a Bill to be passed by both Houses and then to receive the Royal Assent. The Lords, however, cannot amend or reject a Money Bill—i.e. a Bill dealing solely with the raising of taxes or allocation of funds to Government departments, and certified as a Money Bill by the Speaker of the House of Commons. On other Bills, if conflict arises between the two Houses which cannot be settled by agreement, the Commons can, if they wish, pass the disputed Bill again after a lapse of one year, and it would then become law despite the Lords' disapproval. There is one exception to this rule: a Bill proposing to increase, beyond the present five-year maximum, the period that may elapse between one General Election of the House of Commons and the next, must receive the Lords' assent; but a Government with a majority in the Commons could override even this obstacle by creating enough new Peers to give itself a majority in the Lords. In view of these facts, the Upper House is not likely to risk any major conflict in future; it will be co-operative with a Conservative majority in the Commons and reluctantly acquiescent to a Labour majority. What was once the Great Council of the Realm has become a group of elder statesmen engaged in the revision of Bills; both the Conservative and Labour parties now find it difficult to persuade enough of their supporters to take on the unspectacular work which a Peerage involves. The payment of an expenses allowance to the limited number of Lords who actually attend the House has not wholly removed this difficulty.

The House of Commons comes into being as the result of a General Election. For this purpose the United Kingdom is divided into approximately 630 constituencies each returning one member; the number for Northern Ireland is fixed at 12, and minima of 71 and 35 are secured for Scotland and Wales respectively. An attempt is made to preserve equality in the number of electors in each constituency, but the more thinly-populated rural constituencies tend to have

smaller electorates. Apart from members of the House of Lords and a few other groups excepted for obvious reasons, all adult British subjects and citizens of the Republic of Ireland resident in the United Kingdom may vote; and all those entitled to vote may stand for election, except the clergy of the Established Churches of England and Scotland, Roman Catholic priests and persons (other than members of the Government) who hold offices of profit from the Crown. The electoral laws are aimed at preventing bribery, intimidation or excessive expenditure in support of any candidate, and at making it as easy as possible for electors to use their votes; in recent times between 75 and 85 per cent of the electorate have in fact voted. Voting is by secret ballot and on the 'straight' system—i.e. the candidate securing the most votes in a constituency is elected, however many candidates there are, and whether his vote is a clear majority of votes cast or not. Once elected, a Parliament may at any time be dissolved—and a new election ordered—by the Queen on the advice of the Prime Minister, but if a dissolution is not so ordered it occurs, by the operation of the Parliament Act, after five years.

Neither the ballot paper, the electoral laws nor any other laws, make any mention of the existence of political parties; yet the election is fought almost entirely on party lines and its main effect is to determine whether there shall be a Conservative or a Labour Government, since no other party has sufficient support in the country to give it hope of winning more than a few seats. This fact dominates the procedure and atmosphere of the House of Commons, in which we find a Government secure in office for some years by virtue of its majority facing an organized Opposition which, in Parliamentary debate and by propaganda outside, presents itself to the country as a possible alternative Government. Both parties are highly disciplined so that the result of debates is rarely in doubt, their real purpose being to inform the nation of the issues at stake and the facts affecting them.

Constitutionally, the dependence of the Government on Parliament is secured by the fact that the power to collect taxes and the legal authority to maintain the Army and the Air Force is granted to the Government by Acts of Parliament which last only for a year. No Government, therefore, could survive unless Parliament met regularly and was sufficiently in agreement with the Government to pass these Acts. Parliament's jealous control of money appears also in the provisions made to ensure that money is only spent for the purposes which Parliament has approved. Each year the estimates of expenditure for each Department have to be approved by the

Commons and the resulting decisions are embodied in a yearly Appropriation Act. The observance of this Act by Departments is supervised by the Comptroller and Auditor-General, whose reports are scrutinized by the Public Accounts Committee of the House of Commons, with an Opposition member in the chair. The Comptroller and Auditor-General is made independent of the Government of the day since he can only be removed from office by means of an Address to the Crown from both Houses of Parliament.

The legal power of Parliament to deny to the Government both money and armed force, fundamental though it is, stands in the background, remembered but not invoked. In practice a Government which could not command a majority in the Commons would at once recognize the constitutional necessity and either resign or submit the matter to the people's judgment by holding an election. Yet while Parliament in the last resort controls the Government, in the ordinary run of business the Government, with its majority, exercises extensive control over Parliament. Although minimum provision is made for Bills and motions introduced by private Members, the bulk of Parliament's time is spent on business proposed by the Government; nor can any Bill involving expenditure of public money be passed by Parliament unless it is recommended by a Minister. The time-table is determined by the Government, one of its members being appointed 'Leader of the House' for this purpose. The Leader will be careful to act in consultation with the Opposition, and to show regard for the rights of Members in all parts of the House, but when agreement cannot be reached the Government's majority can determine the length and form of debate. The rules of procedure are devised to secure that, while adequate time is given for discussion and due regard paid to the rights of the minority and of individual members, the will of the majority shall finally prevail. Observance of the rules is in the care of Mr Speaker, who, although frequently chosen from the majority party, severs his party connections on election to the Chair and acts as the servant of the whole House.

The interrelation of Government and Parliament is further illustrated by what is called 'delegated legislation'. The services of a modern state cannot be provided unless Ministers have power to make detailed rules on a wide variety of subjects—it may be the administration of prisons or the operation of National Insurance. A Minister has, however, such power to make rules as has been conferred on him by an Act; when he makes them, they have the force of law; but they must be laid before both Houses of Parliament and

opportunity given for either House to annul them if it wishes.[1] Nor is Parliamentary control limited to this particular exercise of Ministerial power; the whole conduct of administration, whether in general or in the smallest detail affecting a particular individual, is liable to question and debate.

Apart from rare Secret Sessions, usually in war-time, the whole of Parliament's work is conducted in public. As each topic comes before Parliament, and as each Bill proceeds through its various stages, public opinion expresses itself through press and radio, through political parties, through letters and visits to MPs both from individuals and from professional, industrial and other organizations whose interests are affected by particular proposals. Despite the legal sovereignty of Parliament, and the power wielded therein by the majority Party, even the most confident Government must watch opinion, knowing that the Opposition is always there ready to take over, and reflecting that at the next General Election the odd man in a hundred and one electors may vote the other way. The existence of an Opposition capable of becoming the Government is, in this country and elsewhere, the real guarantee of democracy; by giving the electorate a choice it places final power in their hands. One of the most significant details of British Government is the provision from public funds of a salary for the Leader of the Opposition.

Popular sovereignty, then, is the final result of the British constitution. Executive power belongs to the Queen, to be exercised through her Ministers. Those Ministers sit in Parliament and hold office by Parliament's consent. The working of a highly organized two-Party system ensures that Ministers, as the leading figures of a party with a Parliamentary majority, control both executive and legislature from one General Election to the next; yet they exercise that control under the shadow of the next election, and in the continuing knowledge that they can be removed from power by the electorate.

The Judicature

Criminal justice in England is administered in the first instance by courts presided over either by unpaid lay Justices of the Peace, or, in the larger towns, by paid professional magistrates. For civil cases—i.e. disputes between two parties, where no offence against the State is alleged—there are County Courts presided over by a professional Judge. In all these courts the case is decided by the presiding Judge

[1] The House of Lords has never attempted to annul Ministerial regulations: but the fact that it could do so might, on some future occasion, be important.

or magistrates; their jurisdiction, whether civil or criminal, is limited to lesser matters. Serious crimes, and disputes involving large sums of money are dealt with by the High Court, which also hears appeals from the decisions of the lower courts.

The High Court contains thirty-four Judges grouped into three Divisions, one of which (Queen's Bench) deals with civil and criminal matters, while the other two are concerned only with civil cases. Each case is tried by a single Judge and—in all criminal and some civil cases—a jury. Where a jury is employed, it is for them to decide the question at issue; the Judge regulates the trial in accordance with the law and the rules of the court, sums up the evidence and instructs the jury on points of law. All citizens who possess or occupy property above a certain value are liable to be called for jury service; the twelve jurors, whose verdict must be unanimous, are supposed to be a sample of the accused's fellow-countrymen, though in fact they are drawn from the middle and upper classes.

Either party in a civil suit may appeal from the High Court to the Court of Appeal—which, together with the High Court, forms what is called the Supreme Court of Judicature. Persons convicted of criminal offences in the High Court may take their cases to the Court of Criminal Appeal. These appeal courts consist of a group of Judges or former Judges of the High Court, sitting without a jury. In civil—and, exceptionally, in criminal—cases, a further appeal lies to the House of Lords, which for this purpose means a group of the Law Lords.

In legal theory, all justice flows from the Queen; the courts are her courts and the Judges, magistrates and Justices are appointed by her on the recommendation of the Lord Chancellor. This high officer of state stands at the head of the Supreme Court, responsible for the whole legal system. Since he is also a member of the Cabinet, and presides over the House of Lords in a manner similar to that of the Speaker in the Commons, he appears as both politician and lawyer, uniting in his person the legislature, executive and judicature. In the British constitution, therefore, we do not find that separation of these three powers of government which is so definitely prescribed in some countries. The interrelation of Parliament and Government has already been noticed, and it now appears that the Judicature is linked with both. Against this, however, we must remember the precaution taken to make Judges of the High Court irremovable except for grave misconduct; we must note that the same rule applies in practice to those who preside in the lower courts; and that Judges form a strong professional group, trained in the law and quick to

resist any attempt by the Executive to influence the course of justice.

A further safeguard against the use of criminal justice as an instrument of tyranny is found in the operation of three principles. (1) That no one may be kept in prison except either by sentence of a court for a proved offence, or to await a trial which must be held as speedily as possible; this is the principle safeguarded by the Habeas Corpus Act. (2) That no one may be tried twice for the same offence. (3) That the burden of proof in a criminal trial always rests on the prosecution; the accused cannot be required to say or do anything which might incriminate himself, and he must go free unless the case against him is proved 'beyond reasonable doubt'.

Conclusions

How far is the working of the British Constitution influenced by economic and social factors, and by tradition and habits of thought? In the 19th century there were some who opposed extension of the franchise on the ground that popular sovereignty must result in a general attack on private ownership of property and in equalization of wealth; while others advocated universal suffrage in the hope of producing these results. Now that popular sovereignty has been achieved, the hopes and fears of these contending parties have been realized in part, but only in part. About one-fifth of the country's economy has passed into public ownership; inequalities of income and of opportunity to reach positions of power, though much reduced, are still substantial. There still exists an upper class drawing large incomes from ownership of land and industry; and an upper-middle class who, though less wealthy, wield exceptional power by virtue of their energy, education and shrewd awareness of the importance of securing good education for their children. Despite frequent examples of people who have risen to wealth and power from lowly origins, it is still a great advantage to be born into one of these classes. In time, taxation of inheritance, extension of public ownership and improvement in the quality of public education may change Britain into a classless community; they have not yet done so. Meanwhile the working class have found, in their Trade Unions, a powerful instrument for protecting their standard of life and securing some share of any increase in the national wealth. The Unions, the various associations of employers and of professional people, the financial interests sometimes described as 'the City' are all examples of powerful groups whose opinion any Government must take into account. This situation has arisen from successive applications of the principle that any group making a substantial contribu-

tion to the country's wealth and capable of taking responsibility should be fitted into the legal framework of power—the principle which led Edward I to include Knights and burgesses in his Parliament and which underlay the Reform Act of 1832. In the past, there have been two parallel traditions in British politics. First is the record of royal and lawful authority, from the Conqueror and the *Curia Regis*[1] to the Queen in Parliament today, which tells how those groups who had already entered the circle of power created forms of government to do their will. The second is the tale of agitations, successful and unsuccessful, from Wat Tyler to the rise of the Labour Party, which records the entry into the circle of groups previously excluded. The former has made our government Parliamentary, the second has made it democratic.

Universal suffrage and widespread education have twined these traditions together and the struggle between conflicting groups is conducted by the methods of Parliamentary democracy. A rising standard of life for all has mitigated the bitterness of conflict; and in recent years it has been increasingly recognized that, in a crowded island greatly dependent on imports, this standard would be destroyed if political or industrial strife interrupted the production of wealth. All groups, therefore—landlords, employers, trade unionists and the political parties which champion their interests—hesitate to press their policies to the point where the opposition they provoked would endanger the common interest. This is not to say that British politics are entirely based on compromise: when as in 1945, the electorate decides that great social changes are required, it effects those changes. But a severe sense of practicality informs the electorate's judgment. It requires to be satisfied, not merely that proposed changes are morally or socially desirable, but that they can be made to work, and can be introduced without grave dislocation of the country's economy. The element of popular sovereignty, which now dominates the British Constitution, is likely to effect changes towards a more equalitarian society; but the timing and manner of these changes will be determined by the electorate's judgment of the immediate practicality of each particular proposal.

[1] The King's Council in the early Middle Ages; from this body, in the view of some historians, the modern Executive, Legislature and Judicature are all descended.

CHAPTER III

The Commonwealth

1. THE QUEEN'S REALMS[1]

FROM the 17th to the 20th century Britain acquired an empire in all parts of the world. In some countries, such as India, large native populations were brought under British rule; elsewhere, as in Canada, thinly populated lands were filled by migrants from Britain and other European countries. As the peoples of these lands grew in number and strength they could no longer be held in subjection. Certain African and Caribbean possessions, and many small but important islands remain indeed an empire, over which the Parliament at Westminster exercises sovereignty. The rest of the empire has turned into a Commonwealth, a group of nations which, though sovereign and equal in status with each other, choose to remain associated. The nature of the association defies exact definition but can in part be deduced from a study of the constitutions of the Commonwealth nations. Those whose peoples are mainly of British or European origin have naturally preferred a closer link with Britain. These are Canada, Australia, New Zealand and South Africa—the 'Dominions' or 'Realms' which acknowledge the Queen as their Sovereign. Their people are British subjects and the Queen and the Parliament of any Realm occupy, for that Realm, the same constitutional position as do the Queen and the Westminster Parliament for the United Kingdom. The other nations—India, Pakistan, Ceylon—whose peoples are Asian, have preferred to become Republics, acknowledging the Queen as Head of the Commonwealth but not as Sovereign. The Realm of Ghana, whose people are African, may in time express the same preference. Any

[1] The older term 'Dominions' is no longer acceptable to the countries concerned; the term 'Realm' has not yet come into full use, but it appears in the Queen's official title.

Realm or Republic may, if it chooses, move from one category into the other, or leave the Commonwealth altogether; meanwhile, parts of the subject Empire—the Caribbean, Central Africa, Malaya—develop rapidly towards the full sovereignty which the Realms and Republics enjoy.

CANADA

Origin and Nature of the Constitution

The Canadian Constitution is contained in the British North America Act 1867 and the several amending Acts which have since been passed. The Realm originally contained four Provinces and the number has since grown to ten, the latest addition being the former Dominion of Newfoundland in 1949. The use of the term Provinces rather than States (as in Australia) indicates that although the Constitution is federal the rights which it guarantees to the Provinces are strictly limited. They can levy direct (but not indirect) taxation, manage publicly owned lands and organize their own local government and administration of justice. Some aspects of commercial law and the law affecting civil rights and ownership of property are in their hands. Of much greater significance is the Provincial control of education. The Province of Quebec contains a large French-speaking Catholic population, whose concern for their language and religion the British Parliament was, from the outset, anxious to respect. All Provinces are required to preserve the rights enjoyed by denominational schools and the Federal Parliament may, if necessary, intervene to ensure that this requirement is met. By contrast with these limited provincial powers, the Federal Parliament is expressly authorized to deal with defence, trade, banking, shipping, postal services, criminal law, the laws affecting marriage, and matters affecting the small Red Indian population; in addition it has a general responsibility for the 'peace, order and good government' of the country, and it is further stated that all powers not expressly given to the Provinces belong to the Realm. These general and residual powers, however, are rarely invoked; in 1940 it was thought desirable to add unemployment insurance to the list of subjects expressly granted to the Realm rather than to assume that the Realm, by virtue of its residual power, could legislate on this subject. The addition of this particular matter is significant: if, in accordance with the general trend of 20th-century government, Canada wishes to extend social services and political regulation of economic affairs, the form of her constitution, unlike that of the United States, with its greater emphasis on

State rights, makes it easy for her Parliament to proceed on a nation-wide scale.

Two remote regions, the Yukon and the North-West, are known as Territories; they come directly under the Federal Parliament and enjoy such degree of self-government as it accords to them. If their population grows they may later be transformed into Provinces.

At first the Canadian constitution could only be amended by an Act of the Westminster Parliament. There grew rapidly, however, a convention that amendment would only be made at the request of the Canadian Government and that such requests would not be refused. In 1949 a British Act stated that the Canadian Parliament could alter the constitution in all matters save the expressed powers of the Provinces, the position of schools, the use of the French and English languages and the five-year maximum life of the Canadian House of Commons. These exceptions appear to diminish Canada's sovereignty, but they have been made as much at her desire as at that of Britain. If Canada chose to ignore them, Britain would have neither the will nor the power to prevent her. The rights of the French-speaking Catholic minority—which are the real issue—depend in fact on the good sense of Canadians rather than on any legal relation of Canada to Britain.

The Executive

In law, this power is exercised by the Queen, through her Governor-General and Privy Council for Canada. In fact the Governor-General is appointed on the advice of Canadian Ministers and performs his duties in accordance with their advice. His powers are therefore as extensive in name and as limited in practice as those of the Queen in the United Kingdom. The Privy Council, also, governs in name only; its powers are wielded by those of its members who form the Cabinet; these, as in Britain, are the leading persons in the party commanding a majority in the House of Commons, and the entire relationship between Cabinet and Parliament is on the British model.

The Legislature

This consists of the Queen, Senate, and House of Commons. The Senate contains 102 members, the number from each Province varying from 4 to 24 according to population but so arranged as to give an advantage to the smaller Provinces. Senators are elected for life by universal suffrage, but must be over thirty years of age and own at least $4,000 worth of property. The House of Commons has

about 260[1] members, so many from each Province in accordance with population, save that no Province may have fewer members than it has senators: the qualifications for voting and for membership are substantially the same as in Britain. Although Money Bills can only originate in the Commons, they, like all other Bills, must pass both Houses in order to become law. The legal powers of the Senate therefore resemble those of the British House of Lords before the passing of the Parliament Act of 1911; in practice it has suffered a decline in power at least as great as that of its prototype. The life tenure and property qualification make it so obviously undemocratic as to deprive it of influence, and, since Cabinet Ministers are drawn entirely from the Commons, senatorial rank does not attract the able and ambitious. Unlike the Upper Houses of some federal countries it has not been able to win prestige as the champion of provincial rights; for these sufficient safeguard has been found in the other provisions of the Constitution and in the fact that political parties, anxious to win a majority in the Commons, find it essential to respect provincial interests.

Elections for both Houses are contested almost entirely on party lines and for many years the chief contestants have been Liberals and Conservatives. In general, the Liberals may be said to favour low tariffs, to champion provincial rights and to assert Canadian national feeling while the Conservatives are inclined to favour high tariffs and a stronger central government and to lay stress on the link with Britain. These differences, however, are only in emphasis; as in the United States, the size and variety of the country cause both parties to be alliances of local interests; the tone and content of propaganda will vary greatly from one Province to another as attempts are made to conciliate farming, fishing, industrial and commercial interests. The Canadian Commonwealth Federation, a moderate Socialist party with a special concern for farmers' problems, dominates the Province of Saskatchewan, has secured two dozen seats in the Commons and obliged the two major parties to give increasing attention to social legislation. Somewhat smaller is the Social Credit Party, which forms the government in Alberta and combines the profession of unorthodox monetary theories with a practical interest in farmers' problems.

The Judicature

Canada has taken from Britain the idea of the rule of law, the practice of trial by jury and the general pattern of its law courts. In

[1] The number is varied in accordance with population changes.

each Province there is a judicial structure on the British model, from the lesser magistrates' courts to the Supreme Court, divided into a High Court and a Court of Appeal. All members of the Provincial judiciary, except the magistrates in the minor courts, are appointed by the Federal Government and can only be removed on grounds of misconduct. For the Realm, there is the Supreme Court of Canada, and the Exchequer Court of Canada. The latter, which has no counterpart in the British system, deals with cases affecting the revenues of the Crown and other financial and commercial matters which affect the Realm as a whole and cannot therefore be dealt with by Provincial Courts. The function of the Supreme Court of Canada is to hear appeals from the Exchequer Court and from the Provincial Supreme Courts, both in civil and criminal matters; this Court has become, with the recent extinction of the right of appeal to the Judicial Committee of the British Privy Council, the apex of the Canadian Judicature.

Since Canada is a Federation, with a written constitution allocating powers to Realm and Provinces respectively, the Supreme Court has a further power, not enjoyed by any British court. It may be asked to decide whether any part of any Act of either the Federal or Provincial legislatures is in accord with the Constitution, and if an Act is held to be unconstitutional it ceases to have effect. Sometimes it is asked to give an opinion on the constitutionality not of actual, but of proposed legislation. Similarly, Provincial Supreme Courts may determine whether Acts of the Provincial Legislature accord with the constitution of the Province. In theory, power of this kind must necessarily belong to the Judicature of any country with a written constitution, but the extent of its use varies greatly from one country to another. The Supreme Court of Canada has not exercised an influence on political development comparable to that of its counterpart in the United States. In that country, the much greater cleavages of tradition and interest between the States, and the wider range of powers given to the States by the constitution, have brought more constitutional problems to the attention of the Court and so increased its responsibilities and powers.

General

Three main factors determine the political climate of Canada; her historical and emotional attachment to Britain; her vast area and resources in proportion to her population; and the proximity of the United States. The first has given her a constitution resembling that of Britain in the late 19th century and a strong tendency to meet new

political problems by devices similar to those used in Britain. The second has made her a land of opportunity for the individual; her people are less politically-minded than those of Britain, inclined to assume that the good life is to be obtained by individual rather than collective action. When Canadians act together politically—the French population of Quebec, or the farmers of the Western Provinces—they do so more as neighbours with certain specific common interests than as citizens professing a particular ideology or belonging to a nation-wide political party. It is, however, recognized that Canada's geography presents problems so vast as to compel governmental action. It is significant that the constitution, in 1867, required the Canadian Government to construct a national railway, and that a recent major political issue has been the development of the St Lawrence waterway. The influence of the third factor has been increasingly felt in this century as commercial and industrial concerns, and trade unions, have arisen which operate on both sides of the border. If we look at the methods and habits of the Canadian political structure, we are reminded of Britain; if we look at the substance of its legislation we are reminded of the United States.

AUSTRALIA

Origin and Nature of the Constitution

The original form of the Constitution is contained in the Commonwealth[1] of Australia Act passed by the United Kingdom Parliament in 1900; it has since been amended on several occasions by the Australian Parliament and people in the manner laid down by the constitution itself. It establishes an 'indissoluble Federal Commonwealth' now consisting of six States, and reserves to those States all powers not expressly granted to the Commonwealth. Control over foreign affairs, armed forces, postal communications, customs and excise, the coining of money and matters relating to the federal capital at Canberra belong exclusively to the Commonwealth. The constitution also gives the Federal Parliament power to make laws over a wide field, including migration, commercial law, marriage and divorce, the acquisition and control of railways and other property needed for public purposes, health services and a system of social insurance. The legislatures of the separate States are not prohibited from making laws on these matters, but if Commonwealth and State laws should differ it is the former which prevail. This

[1] Note that throughout this section the word 'Commonwealth' means the Commonwealth (i.e. the Realm) of Australia.

sharing of power has been made workable by constant consultation between the Prime Ministers of the States and it frequently happens that State and Commonwealth laws are deliberately framed to supplement each other. For example, the law relating to labour disputes, and even to matters as definitely within the State field as housing and education, is a product of joint action by Commonwealth and State legislatures.

A further centralizing factor is finance. Australia started life as a nation with great potential wealth, but in need of much investment in railways, industry, housing and other capital projects if the potentialities were to be realized. Commonwealth and States alike raised loans, both from their own citizens, and from those of Britain. In time, it became clear that unless some limit were imposed on borrowing, Australian credit would be endangered. After discussion, an alteration (Section 105A) was made to the Constitution in 1929, empowering Commonwealth and States to make financial agreements which should be binding upon them. Legal force was thus given to a Financial Agreement which had already been made by voluntary action; and this Agreement became, in effect, an annex to the Constitution. It requires the Commonwealth to pay an annual sum to each State, according to its population, to meet interest on debts already incurred. All future borrowing is to be done under the authority of the Commonwealth, and its extent is to be determined by a Loan Council, consisting of the Prime Ministers of the Commonwealth and of the six States; each State has one vote and the Commonwealth has two votes, and a casting vote. The Agreement has frequently been varied in detail, but it has had the permanent effect of obliging the States to conduct their economic policies within a framework acceptable to the Commonwealth as a whole.

The Executive

The Queen, as Head of the State, is represented by a Governor-General, appointed on the advice of Australian Ministers; his legal and actual powers are now identical with those of the Queen in Britain. His Ministers, originally a Federal Council of seven, are now a Cabinet of nineteen; the distinction between Privy Council and Cabinet, still significant in Britain and surviving vestigially in Canada has here disappeared. Ministers must be members of one or other House of Parliament and are collectively responsible to Parliament; they are, in fact, the leaders of the party with a majority in the House of Representatives. In addition to the Ministries common to all modern states (e.g. Prime Minister, Treasury, External Affairs,

Defence) we may particularly notice, as representative of Australian problems, the Ministries of Repatriation and of Territories. The former deals with the settlement of ex-servicemen as farmers, in co-operation with the governments of the States. The Territories are those lands which belong to the Commonwealth, but not to any State. They include the Federal Capital, the Northern Territory (a thinly-populated and largely desert section of the continent), some islands in the Pacific, and research stations in the Antarctic; their form of government is determined by Acts of the Commonwealth Parliament.

The Legislature

The Commonwealth Parliament consists of the Queen (represented by the Governor-General), Senate and House of Representatives. The Senate contains sixty members, ten for each State, elected for a term of six years, one-half retiring every three years. Since the constitution requires that the House must be approximately twice the size of the Senate, it accordingly has 123 members, two of whom, representing the Capital and the Northern Territory, may only vote on matters specifically affecting those districts. Each State elects a number of Representatives according to its population, so that Tasmania elects five (the minimum guaranteed by the Constitution) and New South Wales forty-seven. The maximum period between one election of the House and the next is three years, but the House may be dissolved at any time by the Governor-General on the advice of his Ministers. The Constitution does not lay down qualifications for Senators, Representatives, or electors; under present law the right to vote, and to be elected to either House of Parliament, is extended to all British subjects over twenty-one, except Australian aborigines, persons of African stock, or members of the native races of Pacific Islands other than New Zealand. For Senate elections each State is treated as one constituency and the system of Proportional Representation is used. Representatives are chosen in single-member constituencies and the voter is required to number all the names on the ballot-paper in order of preference; if no candidate has a majority of first choices, the votes given to candidates at the bottom of the poll are redistributed, according to the preference indicated, until a clear majority for one candidate appears. At all elections, failure to vote is punishable by a fine.

It is noteworthy that, even in 1900, the constitution provided that members of both Houses should be paid and that they should lose their seats if they were absent from a session for more than two consecutive months without permission. The idea, then prevalent in

Britain, that legislation could or should be conducted mainly by leisured and wealthy men, was rightly considered unworkable in a new country without an aristocracy. In this, as in some other matters, Australian politics have anticipated those of Britain.

Australian Parliamentary procedure, for the passing of bills, questioning of ministers, and other business, closely resembles the British model. The constitution provides that Parliament shall hold at least one session every year. The Senate cannot originate or amend money bills, but apart from this the powers of the two Houses are equal. If they disagree over a bill, and neither will give way, the Prime Minister may advise the Governor-General to dissolve both Houses. If, after the ensuing election, at which the disputed bill will be a major issue, the two Houses still disagree, the matter can be decided by a majority vote of a joint sitting of both Houses. However, on the two occasions (1914 and 1951) on which a 'double dissolution' has occurred, the election has given a majority to the same party in both Houses, and so ended the dispute without recourse to a joint sitting. The Senate, being more democratically constructed than the Upper Houses of Britain or Canada, has remained an effective body. Senatorial elections are conducted as much on party lines as those for the House; the six-year tenure and the use of proportional representation cause swings of opinion to be reflected less markedly in the Senate, but since the electorate for the two Houses is the same, differences in their party composition are not likely to be emphatic or of long duration. The equal representation of all States in the Senate is a continuing guarantee to the less populous States that their interests cannot be disregarded, and so helps to hold the Commonwealth together. In the main, therefore, the Senate achieves the purposes which the framers of the constitution had in mind.

The sovereignty of the Parliament is limited in that it cannot, by itself, alter the constitution. If a bill to make such an alteration passes both Houses it must, not less than two nor more than six months thereafter, be submitted to a referendum of all electors. If the two Houses disagree, and the House which desires the alteration passes the bill again in the next session, the Government may if it wishes advise the Governor-General to submit the bill to referendum. If, at the referendum, the bill gets a majority of voters both in the Commonwealth as a whole, and in more than half the States, it becomes law and the constitution is accordingly altered.

The Judicature

Chapter III of the constitution, dealing with the judicature, closely

resembles the corresponding article in the constitution of the United States; for both seek to combine traditional British conceptions of justice with the requirements of a federal state. The prevalence of the rule of law is assumed, and trial by jury and irremovability of judges are prescribed. Further, when the Australian constitution was framed, a system of courts culminating in a Supreme Court, already existed in each of the colonies which were to become the States of the Commonwealth. These State Courts, organized and maintained by the States, continue to exercise all the powers they had when the Commonwealth was created, and to deal with all matters arising from State laws. The constitution brought into existence a Federal Court, the High Court of Australia, which now consists of seven Justices, recruited from the State Supreme Courts. In the first instance, cases are tried by any one of these Justices, in the capital of the State where the case arose. The Court has power to deal with matters arising from laws made by the Commonwealth Parliament; with disputes between States or residents in different States; with matters involving the Commonwealth itself, or the representatives of foreign countries. It has the further power, which the judicature of a federation usually possesses, of interpreting the constitution; it could, for example, declare a Commonwealth law invalid on the ground that it exceeded the powers granted to the Commonwealth Parliament.

Appeals from decisions by a Justice of the High Court may be made to a Full Court—i.e. two or more Justices sitting together, though for appeals on matters affecting the constitutional powers of the Commonwealth all the Justices must be present. There is also a right of appeal from the Supreme Courts of States, though for this purpose there must be three or more Justices. As in all the Realms, there was formerly a right of appeal from the High Court to the Judicial Committee of the Privy Council. In Australia, however, this right never applied to constitutional disputes between the Commonwealth and the States, and it may be further restricted by the Australian Parliament. There appears to be no desire, on Australia's part, to abolish the right altogether, and it is still occasionally used.

General

In the last century Australia offered a new life to those in Britain who, being men of high spirit but with no advantages of birth or wealth, saw little hope of advancement in the aristocratic and plutocratic society of their native country. Some indeed were transported as convicts for no worse crime than political or trade union agitation. They created a nation less polished, more democratic, more conscious

of the rights of labour than the Britain which they had left. Though they would regard Britain with affection, they would not treat her as an example; indeed, for the understanding of Australian institutions, comparisons with the United States, also a nation created by immigrant pioneers, are often more helpful than comparisons with Britain. From impoverished Ireland also many immigrants came; and these, together with some from Southern Europe, create a large Catholic minority which can be influential in Australian politics. By her constitution, Australia is a lay state, with no established church, and no discrimination in favour of or against the followers of any creed; in some States, however, there is growing pressure for State support of denominational schools. A small proportion of the population have come from Asia or the Pacific, but this immigration has been severely restricted for many years. The maintenance of a 'White Australia' has become the unquestioned policy of all parties.

Those sections of the population which are usually not described as 'working-class' are less numerous and less influential in Australia than in Britain, the other Realms, or Western Europe. It was therefore natural that a strong Trade Union movement and Labour Party should spring up quickly. The two, resembling here a British rather than an American pattern, work in close alliance; but the organization of the party, particularly in its methods of selecting candidates for public office, is reminiscent of American practice. The Labour Party has become the largest single factor in Australian politics, and its opponents, though critical of its formal and rigid structure, have been obliged, in order to secure power, to pay this characteristic the tribute of imitation. Labour's objective has been a working-class democracy and its means to that end have been powerful trade unions, a basic wage, compulsory arbitration in labour disputes, a strong tariff policy to protect wages in industry, a land policy designed to prevent the growth of large estates, social services, and—more recently, and with less popular appeal—public enterprise in banking, water conservation and several branches of industry. To implement these policies Labour has found it necessary to press for increased powers for the Commonwealth. The constitutional alteration giving the Parliament power to legislate for social services was a proposal by Labour, and approved on referendum; other Labour proposals to increase Parliament's control of the economy have not been approved.

Opposition to Labour was at first intense but fragmented; the urban middle-class in some States and the wealthier farmers in others found it difficult to frame an effective united programme. Recently,

however, these forces have taken shape as a coalition of the Liberal and Country parties. Accepting the trade-union-welfare-State pattern of Australian society, it has urged the desirability of private enterprise, the danger of trade union tyranny, the rights of States as against the Commonwealth, and the needs of primary producers in the countryside.

Not far below the surface in all parties is a strong undercurrent of anxiety about Australia's position in the world. She is thousands of miles distant from any large country with a civilization like her own; her economy is still heavily dependent on a few primary products; mindful of the 'White Australia' policy she watches with concern the spread of Chinese (as formerly of Japanese) influence in Asia and the Pacific; her membership of the British Commonwealth and the use of her territory for military research make her a target for Communist espionage. To deal with this situation there is general agreement that Australia must cherish her connection with Britain, seek understanding with the USA, make her industries more numerous and more varied, and increase her population by natural growth and by immigration from Britain and Europe; but every method proposed for implementing these policies offends some section and creates strains within the political parties.

NEW ZEALAND

Origin and Nature of the Constitution

A form of representative government was established in New Zealand by the Constitution Act of 1852, but this was regarded by the British Parliament more as a type of local government than the foundation of a sovereign State. Indeed, as late as 1900 it was still considered possible that New Zealand might join the Australian Commonwealth. More than a thousand miles of ocean, however, separate the two countries: the white population of New Zealand was almost entirely of English and Scottish origin, with a larger proportion of middle-class immigrants than in Australia; the native Maoris, quick to adapt themselves to the changes brought by the white man without losing their identity or becoming a subject race, were a unique element. A separate nation emerged; and because this development was unexpected, there was not, as in the other Realms, any single act of constitution-making. The Act of 1852 was several times amended by the British Parliament and, in this century, by the New Zealand Parliament. In consequence, New Zealand, like Britain and unlike any other Commonwealth nation, has an 'un-

written' or 'flexible' constitution which must be found, not in any one document, but in successive Acts of Parliament. Since the small size of the country makes a federal structure neither necessary nor desirable, the Parliament is fully sovereign, able to legislate on all matters, including the alteration of the constitution. New Zealand's status as a Dominion was first recognized in 1907: since then she has progressed to full sovereignty within the Commonwealth, the remaining vestiges of dependence on Britain being only those which New Zealanders themselves wish to preserve.

The Executive

Executive power belongs to the Governor-General, appointed by the Queen on the advice of New Zealand ministers, acting through and on the advice of an Executive Council, regularly called the Cabinet. The Civil List Act of the New Zealand Parliament contains a long list of Ministries, but more than one portfolio is frequently held by a single person, and the Cabinet usually consists of the Prime Minister and about fifteen others. The exceptionally wide range of governmental activity has caused New Zealand to give special attention to the recruitment and training of her civil servants. A Public Service Commission, one member of which is nominated by the civil servants themselves, seeks to create a service which shall be democratically recruited, with an avenue of promotion according to ability from the lowest to the highest positions, and sufficiently well-trained and versatile to undertake a wide range of activities.

The Legislature

Until 1950, this consisted of an elected House of Representatives and an appointed Legislative Council. In that year, the latter was abolished; proposals to replace it by an elected Senate have not found favour, and New Zealand is committed to single-chamber government. The House contains seventy-six European members elected by the European population in single-member constituencies, approximately equal in size, on a 'straight' voting system. For the representation of Maoris, the country is divided into four districts in each of which the Maoris elect one of their own race, thus bringing the total membership of the House to eighty. This separate representation of the two races satisfies both, and meets the facts of the situation. Although intermarriage is not uncommon and many Maoris enter industry and the professions, the majority live in rural areas, preserving much of their own way of life but pursuing occupations appropriate to the economy of a modern state. Their education

and the care of their lands is in the charge of the Minister of Maori Affairs. A significant testimonial to New Zealand's handling of the racial question is the increase of the Maori population, both absolutely and as a proportion of the nation. In both the Maori and European electorates, all adult British subjects who have lived more than a year in New Zealand are entitled to vote, though the procedure for registration of Maoris is more elaborate and Maoris who have been convicted of certain offences are disqualified. With a few obvious exceptions (e.g. bankrupts) all persons entitled to vote are also qualified to be elected.

The House has a maximum life of three years, but the Prime Minister may at any time request the Governor-General to dissolve it. Business is usually conducted in annual sessions, and a member forfeits his seat if he is absent for more than one session without leave. Ministers have to be members of the House. The relationship between Legislature and Executive, the control of finance, and the procedure of the House all closely resemble the British model. When a Bill has passed the House the Governor-General always assents to it though he has, in law, the power to reserve some Bills for consideration by the Queen—that is to say, by the British Government. Since 1930, however, it has been understood that any such Bill would receive the Queen's assent if New Zealand so desired; and the New Zealand Constitution Amendment Act passed by the British Parliament in 1947 states that the New Zealand Parliament may abolish this power of reservation whenever it wishes. Further, in 1947, the New Zealand Parliament undertook that it would ask the British Government's consent before requiring the Governor-General to assent to any Bill which appeared to the British Government to damage the interests of people who had bought securities issued by the New Zealand Government. This undertaking replaces the power, once possessed by the British Government, of disallowing New Zealand Acts; it was given so as to ensure that New Zealand securities would be regarded by British law as 'trustee securities'—i.e. suitable for purchase by people handling money which is not their own but may be invested by them on behalf of others. If New Zealand did not consider it necessary to preserve this advantage for her securities, she could withdraw the undertaking; we have here, not a mark of subordination but a bargain between sovereign states.

The Judicature

The principles of British law and justice prevail but the structure of

courts is, as befits a smaller country, somewhat simpler. Lesser matters, both civil and criminal, are dealt with in the Magistrates' Courts, and above these is a Supreme Court and Court of Appeal, both consisting of the same body of Judges, appointed by the Governor-General and removable only by a procedure like that in Britain, save that there is a retirement age of seventy-two. The functions of the Supreme Court—to deal with the more serious cases and to hear appeals from lower courts—are exercised by any one of the Judges, and those of the Court of Appeal by three or more Judges sitting together. This Court is the final authority, in New Zealand, over all cases, but it may give leave for appeal to the Privy Council in civil cases.

General

New Zealand is predominantly a pastoral country, relying for her prosperity on the world market for food. She therefore suffered considerably in the world depression of the early 1930s, and since then the urge to vary her economy by encouraging industry, and the desire of her workers to protect themselves by social legislation, have gained strength, though they had indeed been present at an early stage in her history. A Labour Government, taking power in 1935, greatly extended the social services and developed the system of semi-compulsory conciliation and arbitration in labour disputes which had been, since late in the 19th century, a distinctive feature of New Zealand's politics. Whereas in Britain trade unions grew up while the working-classes were still without the vote, and later secured representation in Parliament, in New Zealand the workers secured, first from the Liberal and later from the Labour Party, legislation which encouraged the growth of trade unions. Unions which accept the obligation to settle disputes by conciliation, or, failing that, by a compulsory award from the Arbitration Court, secure that membership of the union is made compulsory for workers in the industry concerned. This court, which dates from 1894 and consists of employers' and workers' representatives, presided over by a judge, is an example of how a judicature may be extended to deal with matters beyond those commonly regarded as within its sphere. The whole system seems, at first sight and to British observers, to contain an unwelcome degree of compulsion; yet it has proved acceptable to a nation whose instincts are at least as democratic and libertarian as those of the British. This may be because differences between rich and poor, and between social classes, are less marked in New Zealand; there is stronger mutual trust and therefore a more

earnest desire to avoid industrial strife. In Britain, the greater social equality prevailing since the war has been accompanied by a growing tendency to settle disputes by conciliation rather than by strike or lock-out; but the traditional dislike, on both sides, of abandoning even the right to use these weapons, still persists.

Class and sectional differences, however, do play a part in New Zealand life. The National Party mainly represents rural and middle-class elements. It contends that the Labour Party is too favourably disposed to the industrial trade unions, too zealous to extend equality through taxation and social services and too eager to expand the already considerable State ownership of public utilities and forms of transport. Yet, in the main, New Zealand life and politics are inspired by a spirit of moderation and tolerance which has served the country well both in racial and economic problems: Some visitors, and some New Zealanders, find the resulting way of life flat and uninteresting. Certainly the remoteness and smallness of the country have hampered the growth of culture, though efforts are being made to remedy this defect. It cannot be said that New Zealand has tried to avoid involvement in the destinies of mankind: as a Commonwealth nation she has borne her part in wars; like Australia she has taken responsibility for International Trusteeship territories in the Pacific and concerns herself with the organization of defence in that region. Favourable climate, fertile territory, absence of religious conflict and the co-operative intelligence of her native race have given her advantages; she can fairly claim that she has used them wisely.

SOUTH AFRICA

Origin and Nature of the Constitution

The Union of South Africa was created from the British Colonies of Natal and the Cape and the conquered Boer Republics of Transvaal and Orange Free State, by the South Africa Act of 1909, which, as subsequently modified, contains the constitution of the Union. Like the other Commonwealth nations, South Africa has travelled from partial subordination to Britain to complete sovereignty, a fact which is made explicit in the Status of the Union Act passed by the South African Parliament in 1934. The constitution is unitary, the four constituent parts of the Union being established as Provinces, whose form of government is indeed prescribed by the South Africa Act but can be altered at the will of the Parliament of the Union. They are governed by elected Councils with power to make ordinances con-

cerning agriculture, health, education, public works and local administration and to levy direct taxes for these purposes. The ordinances, however, require the assent of the Governor-General, as advised by his Union Ministers; further, the Union Parliament can legislate on these, as on all other matters, and its laws will, in case of difference, prevail over provincial ordinances. In addition to the four original provinces, the thinly-populated territory of South-West Africa is now regarded as part of the Union and has a legislative assembly comparable to the provincial councils.

The main fact of South African constitutional practice and political life is to be found, not in any of the Acts so far mentioned, but in the laws governing elections. The population comprises 8,500,000 Africans, 1,000,000 'Coloured'—this term being used to denote people of mixed race, 350,000 Asians, and 2,500,000 people of European descent, of whom rather more than half are of Boer, and most of the remainder of British origin. Only those of European descent may sit in Parliament or in Provincial Councils, and, with a few exceptions, only these may vote. South Africa therefore is not, and does not, intend to become a democracy, but rather a racial oligarchy. This policy is resolutely maintained by the overwhelming majority of white South Africans but in recent years differences between political parties over the handling of racial matters have raised an important constitutional question. The South Africa Act conferred on the Parliament the power to alter the Act itself, which meant that the Constitution was 'flexible' and the Parliament sovereign, on the British or New Zealand, and not the Australian model. If, however, the Parliament wished to alter the rule that English and Afrikaans were both to be official languages, or to touch the rights of certain non-European voters in Natal and the Cape, it could only do so by a two-thirds majority of all members of both Houses at a joint sitting. In 1951, the Government formed by the Nationalist Party introduced legislation affecting the rights of coloured voters but was unable to secure the necessary two-thirds, though the Bill passed each House separately by a majority vote and was held by the Government to have become law. The Appeal Court, however, declared it to be invalid. The Government contended that the South Africa Act was an Act of the British Parliament, and that in view of the undoubted acceptance, throughout the Commonwealth, of the full sovereignty of the Dominions, no British Act could limit the power of the South African Parliament. If this principle were accepted it would mean that the Parliament of any Dominion could set aside the constitution, on the ground that it was a British creation, and then, by simple

majority vote, exercise whatever power it pleased. Such a doctrine would be unwelcome to the States of the Australian Commonwealth and the Provinces of Canada, and it might well hamper the achievement of Dominion status by other British territories. The West Indian islands now entering the Caribbean Federation would be dismayed if it were suggested that once the Federation became a Dominion, its central legislature could exercise unlimited power. At the heart of this doctrine lies a confusion between the sovereignty of a *nation*—i.e. its freedom from control by any other nation, and the sovereignty of the Parliament within the nation.

The South African Government finally decided to secure its object by altering the composition of the Senate (which could be done by the ordinary process of law-making) in such a manner as to ensure the two-thirds majority at a joint sitting. Tacitly, this implies an acceptance of the Court's verdict on the legal point, while the victory in substance goes to the Government. The correct view of the South African constitution therefore appears to be that its flexibility, and the sovereignty of the Parliament, are still subject to the minor limitation that, for legislation about the official languages and the franchise of non-Europeans, a special procedure must be followed.

The Executive

The South Africa Act vested executive power in the Queen acting through the Governor-General, and the Status of the Union Act adds that 'the Queen' means the Queen acting on the advice of her South African Ministers, thus putting in black and white what is implicit in the British Constitution. Ministers are sworn as members of the Executive Council and hold this title for life, as do Privy Councillors in Britain; but the task of advising the Governor-General and governing the country is, of course, carried out only by those Executive Councillors who belong to the party in power and hold ministerial office. These form the Cabinet; they must sit in one or other House of the Parliament and their method of work and relation to Parliament are the same as those of a British Cabinet. The sovereignty of the Crown over native inhabitants is made plain by designating the Governor-General as Supreme Chief (over all native chiefs); the Native Affairs Commission, a small body of Europeans with knowledge of native problems, has the right to advise him on legislation or other governmental action in this field.

The Legislature

Parliament consists of the House of Assembly and the Senate. In the

House there are 150 members elected on a straight voting system in single-member constituencies of approximately equal size, in the four provinces, six similarly elected in SW Africa, and three elected by Africans in the Cape who are literate, own property worth £50 or more, or have an annual income of £75 or more, and have registered themselves as voters. Outside these three African constituencies, all adult Europeans with over five years' residence in the country have the vote; there are also a few Coloured persons in Natal, and a larger number in the Cape, who obtain the vote on the same conditions as Cape Africans but at present exercise it, like Europeans, in the ordinary constituencies. It is now proposed to place the Cape Coloured in separate constituencies, like the Cape Africans, and from this proposal has arisen the constitutional crisis described above. All members of the House, however elected, must be of European descent. The House lasts for a maximum period of five years but may be dissolved at any time by the Governor-General.

The Senate, before the recent changes, consisted of eight senators appointed by the Governor-General, four of whom must have special knowledge of native affairs; four elected by electoral colleges formed of native chiefs, headmen and councils according to the type of native institutions to be found in the various parts of the Union; eight elected from each Province by a joint body composed of the members of the House of Assembly for that province and the members of the Provincial Council,[1] the two sections of this body being equal in number; and two elected and two appointed senators for SW Africa. The effect of the changes is to raise the total number of Senators from forty-eight to eighty-nine by increasing the number elected from the Provinces, and to award each Province a number proportionate to its number of voters; further, the majority party in each Province is empowered to choose senators all of its own opinion, whereas the former practice was to return Senators in proportion to provincial party strengths. The intention and present effect of these changes is to increase the Parliamentary power of the Nationalist Party. All Senators must be of European descent, over thirty years of age, and possessed of the qualifications required for a voter at elections to the House of Assembly; elected senators must, in addition, own at least £500 worth of immovable property. The maximum life of a Senate is ten years, but, if the House of Assembly is dissolved, the Governor-General may dissolve the Senate at any time during the next four months. The Senators elected by natives,

[1] Those Members of the House of Assembly and of the Cape Provincial Council who are elected by natives are excluded.

however, hold their seats for five years and are unaffected by a dissolution.

The Parliament conducts its business mainly on the British model. A special feature is that the budget of the Railways and Harbours Board is presented and discussed separately from the main national budget. Money Bills must originate in the House, and the Senate cannot amend them; as in Britain, proposals involving a charge on public funds must come from the Government. When differences arise between the House and the Senate, a first attempt is made to resolve them by discussion. If the Senate persists in its opposition to a Bill even after the House has passed it twice in two successive sessions, the Governor-General may then convene a joint sitting of both Houses, at which the matter is decided by a majority vote.This type of joint sitting must be distinguished from the type described above which is required to alter the 'entrenched clauses' of the Constitution—i.e. those dealing with the official languages and the rights of non-European voters. A Bill affecting these clauses must, at its inception, be presented to a joint sitting and will require a two-thirds majority.

The Governor-General will usually assent to a Bill; he may, however, return it to Parliament recommending amendments. Since he will only do this on the advice of Ministers, who, as a condition of being Ministers, will have a Parliamentary majority, this process is only a device whereby the Government can, with Parliament's approval, make last-minute alterations to a Bill. He is further required, by the South Africa Act, to reserve for the Queen's consideration any Bill limiting the right of South African citizens to appeal from the Union's Appeal Court to the Privy Council; and this provision is repeated in the Status of the Union Act. In such a case the Queen would act as the South African Government desired; the rule does no more than affirm the respect in which the Privy Council, as a judicial authority, is held.

The Judicature

Lesser matters are dealt with in magistrates' courts, above which is the Supreme Court, separated into divisions for the provinces. Judges are appointed by the Governor-General on the recommendation, through the Cabinet, of the Minister of Justice; they can only be removed for misconduct, by an address from both Houses, but must retire at the age of seventy. The Minister of Justice also appoints magistrates and is generally responsible for the enforcement of the law; he thus combines some of the functions of a British

Lord Chancellor (though, unlike that dignitary, he is not a Judge) with some of the duties of a Home Secretary. There is also an Appellate Division of the Supreme Court, whose functions may be exercised by three or more judges sitting together. This Appeal Court is the final authority in the Union on all matters civil and criminal; it has also the duty of interpreting the constitution and can, as has been shown, declare an Act of Parliament invalid. The right of further appeal, to the Privy Council, is rarely exercised and only by leave of the Privy Council itself.

While all inhabitants of the Union are subject to the ordinary law and courts, many natives, particularly those living apart from Europeans, are subject to their own laws and customs administered by chiefs and councils under the supervision of Europeans holding the office of native commissioner. In certain areas, wholly or mainly inhabited by natives, the Governor-General can legislate simply by proclamation. Further, many of the ordinary laws enacted by Parliament either impose special restrictions on natives (e.g. restricting their movement and requiring them to carry passes) or emphasize the Government's determination to separate the races (e.g. by prohibiting marriage, and sexual intercourse, between whites and natives).

General

South Africa is the only independent State in the world which avowedly bases its institutions on the principle of domination by one race over another. Despite many other factors in South African politics, the single question of the relationship between 2,500,000 Europeans and the remaining four-fifths of the population governs political life and will determine the future of the country. At no time in the Union's history has any considerable body of white opinion favoured even a gradual approach to racial equality, but only recently, in the *apartheid* policy of the Nationalist Government, has the doctrine of domination been fully and explicitly maintained. Stated in its most moderate form, this doctrine is to the effect that it is in the best interests of black and white to live separately. Some of its exponents have compared it to the institution of the Danelaw in 9th- and 10th-century England, by which Englishmen and Danes were to live under their own laws, in separate parts of the country, under the nominal rule of an English King. The comparison is not valid. The reserves set apart for natives in South Africa do not amount to more than one-eighth of the whole territory and the white population are heavily dependent on the black for labour,

mostly unskilled, in mining, industry, agriculture and even domestic service. Most skilled occupations are, either by law or white trade union action, reserved for whites. The Nationalist Party recognizes that, to carry through its policy, the reserves must be enlarged, and the black workers treated as far as possible as migrant labourers, with their homes in one land and their work in another. It is further contended that, for example, the provision of separate railway services for the two races enables Africans, competing only with members of their own race, to obtain administrative posts in their own service for which they could not hope if they competed with better educated Europeans in a unified service. This principle, it is said, is capable of wide application, and may well reconcile some Africans to *apartheid.* In most of South Africa's industries, however, there must be both black and white workers, and here the restriction of skilled work to whites displays the real nature of *apartheid.* Only if the white population were prepared to do their own unskilled work and domestic service, could the comparison with the Danelaw be upheld; since this condition will not be fulfilled, *apartheid* must mean domination rather than separation. Above all, the decisions about the implementation of the policy, and the vital question whether it is in the interests of both races, are reserved, by the franchise laws, for the judgment of one race; these matters are not to be submitted to the judgment of any African, however experienced or well-educated.

It is in this atmosphere that institutions framed on the British model are required to work. Now the experience of Britain over centuries, and of the other Realms over a lesser period, has shown that the inherent tendency of these institutions, with their emphasis on discussion, consultation, and rule of law, is to produce political and legal equality and even a trend to social and economic equality. South Africa has determined to prevent this development and in consequence the institutions themselves begin to wither. The constitutional changes recently forced through in pursuance of the policy of the Nationalist Party diminish the rights not only of the Coloured population, but also of white minorities. The laws designed to secure social segregation restrict the personal liberty of white and black subjects to an extent that would not be tolerated in other Commonwealth countries; and the need to check political propaganda against *apartheid* has a similar effect on political liberties. The party system, the vigorous working of which has elsewhere been found essential to democracy, is deprived of vitality. Although a small and resolute group of liberal white South Africans protest against *apartheid,* the United Party, which is the only party large

enough to form a possible alternative government, is too far committed to the principle of racial inequality to base its opposition on anything more than matters of detail. To some extent it represents the interests of English-speaking whites, as against the predominantly Boer Nationalist Party. The small Labour Party is based mainly on white trade unions and cannot therefore give effective voice to the beliefs in human equality and social justice which animate Labour Parties elsewhere.

Compared with many parts ot the continent of Africa, the Union is prosperous, though the backwardness of most of her population hampers development. This fact helps to reconcile many Africans to their political subjection and enables white South Africans to claim that Africans fare better in the Union than in surrounding territories. Gradually, however, and particularly in British Colonies, the African is making political and economic progress. Despite the many differences between African peoples, they feel an increasing common interest in their relations towards the whites; and the appearance in West Africa of Ghana, an independent African State within the Commonwealth, is bound to make Africans within the Union less tolerant of subjection. A further source of friction are the 'High Commission Territories'—Bechuanaland lying next to, and Basutoland and Swaziland within, the territory of the Union. South Africa has repeatedly requested that these be transferred from British rule to her own: successive British governments, mindful of the wishes of the inhabitants and aware of the nature of Union racial policy, have refused. The racial question, therefore, profoundly affects South Africa's attitude to Britain and the Commonwealth. The Nationalists, looking at world politics and fearing the advance of Communism, are bound to realize the value of a link with Britain; yet they are also bound to resent the fact that British colonial policy accepts racial equality, at least as an ultimate objective. This resentment, combined with the old hostility between Boer and Briton, has led some of the Nationalists to urge that the Union should become a Republic, either within or outside the Commonwealth. The United Party, with its closer British affiliation, would resist such a proposal; but the recent constitutional changes make their accession to power less likely.

CHAPTER IV

The Commonwealth

2. THE REPUBLICS

THE foundations of Britain's Indian Empire, from which the Republics of India and Pakistan have sprung, were laid 200 years ago. For a century it grew under the guidance of the East India Company till it covered the sub-continent; for a second century it was ruled by the British Crown and Parliament, and successive Acts gave to it increasing measures of self-government. When, therefore, after the second world war, it was agreed that the subjection of India to Britain should be ended, the constitution-makers started with a far more highly developed machinery of government, mainly on the British model, than had existed in the older Dominions at the time their Dominion status was recognized. This is certainly one reason why the constitutions of India and Pakistan are more elaborate than those of the Dominions; drawing on the Government of India Act of 1935, which the British Parliament passed for the regulation of the Indian Empire, they contain, in addition to purely constitutional material—that is to say, the basic rules determining the form of government—much administrative detail which, in most constitutions, would be left for the legislature to settle in the process of ordinary law-making.

INDIA

Origin and Nature of the Constitution

As soon as it was agreed that British rule should end, a Constituent Assembly met to frame the new form of government. Religious and other differences, however, soon made it necessary to accept the partition of the Indian Empire into the predominantly Hindu India and predominantly Moslem Pakistan, and two separate Assemblies

resulted. The Indian Constituent Assembly was largely composed of Indian politicians, many of them with legal training. Although, under British rule, they had sat in provincial legislatures, and taken part in government, they had not been able to wield the power or bear the responsibility to which their counterparts in any independent country would have been accustomed; their practical experience was not commensurate with the amount of thought they had given to political ideas. This may explain why they did not share that severely pragmatic approach which is characteristic of British politics, and were anxious to put into their Constitution an explicit formulation of ideas about the purpose of the State and the rights of the individual which, in the British constitution, can only be deduced from the nature of the practical arrangements made. This tendency was strengthened by the fact that so many of the Assembly were well acquainted with the writings of those British political theorists who had championed libertarian ideas; many, also, had been influenced by Socialist thought.

It was observed in Chapter I that constitutions are influenced by the particular abuses against which the makers of the constitution were, at the time, anxious to protest. The Indians, remembering the repressive powers used by Britain in the years of growing agitation against her rule, were eager to proclaim the rights and liberties of the individual. They were, however, also aware that Indian society was riven by social, economic, religious and caste differences; that the new India contained, side by side with the former provinces of British India, accustomed to representative government, Indian States which had been ruled, often quite undemocratically, by Princes subject only to the paramount sovereignty of the British Crown; and that all these causes of disunion had often been advanced as reasons why India would not be fit for self-government. The new rulers of India, despite their concern for individual liberty, had no intention of allowing disruptive elements to destroy the State; they were determined to apply the same principles to the former provinces and to the dominions of the Princes; and to declare the duty of the State to mitigate or remove the causes of disunity.

These ideas find expression in those sections of the Constitution which deal with the component parts of the Indian Union, the fundamental rights of citizens and the principles which are to direct state policy. The Union is composed of States which, in the original form of the Constitution, were classified as 'A', 'B', or 'C'. 'A' States were, with some boundary alterations, the former Provinces of British India. 'B' States were formed by grouping adjacent territories

previously ruled by Princes. The form of government of these two groups was substantially the same, but a Prince held a nominal position as Governor in a 'B' State. 'C' States were special areas—e.g. Delhi, the seat of government of the Union—with a lesser degree of autonomy. In 1956, however, the distinction was abolished, and all States are now on the same footing. Princes, as such, play no further part in government: they enjoy the ordinary rights of citizens. In addition to the States there are some islands in the Indian Ocean, known as Union Territories. These are in effect, colonies or dependencies, and their form of government is prescribed by the President of the Union.

The constitution avoids the word 'Federation' and it is arguable that the Indian Union is a hybrid between a federal and a unitary state. On the one hand, the forms of government of the States and the distribution of powers between them and the Union are prescribed in the constitution and only to be altered by special procedure requiring the consent of at least half the States; and the Union Parliament is so constructed as to represent both the people as a whole and the separate States. On the other hand, the Union Parliament can, by its ordinary process of law-making, alter the boundaries of any State, or create new States; the only proviso being that such a proposal must be recommended to Parliament by the President, who must first ascertain—though not necessarily comply with—the wishes of the States concerned. We should also notice the special provisions which apply when the President thinks it is necessary to proclaim a state of emergency. In most constitutions where such provisions appear, their effect is to increase the power of the Executive at the expense of the Legislature and the Judicature. The Indian provisions are so framed as to enable the President to take over the executive, and Parliament the legislative, powers of the States. An emergency can continue for two months by Presidential decree, and be prolonged thereafter at the will of Parliament. The only safeguard of the rights of States is their special representation in one House of Parliament called the Council of States. The Constitution thus expresses both the present need for a federal form of government, and the desire that this shall develop in a unitary direction.

The Union Parliament has the sole power to legislate on defence, foreign affairs, citizenship, transport and communications, currency banking and insurance, electoral law, inter-State problems, and most forms of taxation. Both Parliament and the State Legislatures can deal with criminal law, marriage, labour legislation and social insurance, and economic planning; but the laws of Parliament, in this

field, prevail over those of a State. The Legislatures of States have normally the sole right to pass laws concerning local government, police, public health, education, land-tax, intoxicating drink, and gambling; but the Council of States can, by a two-thirds majority, empower Parliament to legislate even on these matters. In the executive field, the Union Government may give directions to States requiring them to see that Union laws are obeyed; and a Finance Commission, nominated by the President, supervises the collection of taxes and the distribution of grants to States. With a few minor exceptions, freedom of trade is ensured throughout the Union.

The section of the constitution dealing with fundamental rights asserts freedom of speech, worship, movement, association; also the right to acquire property and to work at any occupation for which one is qualified. All forms of racial, religious and caste discrimination, particularly the old and repulsive practice whereby a large section of the population were regarded as 'untouchable' are forbidden. Minorities with a distinct language and culture are guaranteed their own educational systems. To these liberal concepts is added another of a socialist nature; the right of the State to acquire the property of individuals, together with the duty to pay compensation, is recognized. Safeguards for individual freedom, comparable to the British *habeas corpus*, are provided, and it is further stated that the Supreme Court shall, by the issue of directions and orders, ensure that this section of the constitution will be enforced. This would mean, for example, that an individual treated as an 'untouchable' could obtain from the Court á remedy against those who had so treated him; or that a law passed by Parliament or a State Legislature which prevented a minority group from preserving their own language could be declared invalid. It must be remembered that India contains a great many different peoples, living at different cultural levels, and it will probably be a long time before the principles here laid down are fully established in fact; but India has at least set herself the goal of equal rights for all her citizens.

British students of politics, sharing the national reluctance to write anything more into the law than can immediately be enforced, may feel some doubts about the 'fundamental rights' section of the constitution. They will be still more doubtful of the section on 'directive principles'. It is here asserted that the objects of policy are the promotion of a just social order, providing for everyone the opportunity to earn his living in reasonable conditions and to share in the ownership of the means of production; the provision of full education of all children up to the age of fourteen; the encourage-

ment of local self-government in villages; the care of agriculture, with special reference to the cow, for centuries a sacred animal; the prohibition of alcoholic drinks; and the observance of international obligations. It is admitted that all these are future objectives, not rights now available, or enforceable in the Courts. An Englishman may ask what is the good of mentioning universal education in a Constitution until you have passed an enforceable law to provide the schools and oblige parents to use them? An Indian may reply that it is good for a new nation, unprovided with the self-confidence that springs from centuries of independence, to strengthen its spirit by looking to the future and proclaiming the honourable purposes for which it will use its freedom and its nationhood. He may also reply that there is no necessity for the whole human race to be as prosaic as the English.

The Executive

The Head of the State is a President elected for a term of five years by an electoral college composed of all elected members of the Union Parliament and of the Legislative Assemblies of States, so arranged that the States have voting power according to their population, and the Parliament has a voting power equal to that of all the States; he must be a citizen over thirty-five years of age. He can be removed from office during his term by impeachment—that is to say, if either House of Parliament decides, by a two-thirds majority, to bring charges of grave misconduct against him before the other House, and the other House, by a two-thirds majority, judges that the charges are proved. A Vice-President, who has the duties of deputizing for the President and presiding over the Council of States, is elected by all the members of Parliament. He must be over thirty-five, holds office for five years, but may be removed if a proposal to that effect is carried by a majority in the Council of States and approved by a majority of the other House.

The President possesses, in law, all the powers and prerogatives of the Queen in Britain, and all governmental authority is exercised in his name. He is required to appoint a Council of Ministers, who hold office at his pleasure and must be members of one or other House of Parliament. The constitution explicitly grants to the President that right to consult with Ministers and to be informed of their policy which the Queen, by long usage, enjoys in Britain; but the final power to make decisions rests with Ministers. Here we have the familiar Commonwealth pattern of Cabinet Government, placed, this time, in a republican setting. Yet the Indian constitution, unlike the Australian, does not explicitly require the President to act as

Ministers advise; as in the British constitution, the exact relationship between Head of State and leaders of Government is only partially defined. There are, indeed, two views of the position of the Queen in Britain. On one view, her constitutional rights are only the rights 'to be consulted, to encourage, to warn' and the obligation to act only on the advice of Ministers is absolute. On the other, there still remains a residual power of independent action and a duty to see that the spirit of the constitution is observed, and this might emerge if, for example, a Prime Minister resigned and felt unable to give advice as to his successor, or even if a majority in Parliament attempted to violate the spirit of the constitution by prolonging the life of Parliament against the clear wish of the people. These are obscure and hypothetical questions; but the deliberate vagueness of the Indian constitution suggests that the Presidential office is based on the second of these two views. The immense complexity of India's governmental problem, and the uncertainties as to the future working of the constitution make a case for having, in the machine of government, someone with a permanent responsibility for seeing that the machine continues to work. Indians would, indeed, be more willing to grant powers to their President than would the people of a Dominion to the Governor-General. The latter, by so doing, might be assumed to accept British supremacy; the Indian President, however, is in no sense a representative of the Crown. Both in fact and in name, he owes his position to the choice of the Indian people.

The same pattern is found in the States. The position of Head of State is filled by a Governor, appointed for a term of five years by the President, and he acts through, and on the advice of, Ministers who sit in the State Legislatures.

There is a Civil Service Commission for the Union, and a similar Commission for each of the States, to recruit, train and organize the Civil Service. Under British rule, the process of 'Indianizing' the public services had been carried a long way, and the Union Civil Service, particularly in its senior grades, is highly competent. The low general level of education, however, and the still widespread illiteracy, have made it difficult for many of the States to maintain the standards of competence and integrity that they will need for the proper performance of their duties. All armed forces in India come under the control of the Union Government, and the President is Commander-in-Chief.

The Legislature

The Union Parliament consists of the Council of States and the

House of the People. The Council of States contains twelve members nominated by the President to represent literature, art, science and social services, and not more than 238 members chosen, on a proportional representation system, by the elected members of the Legislative Assemblies of the States in such manner as Parliament may prescribe. The numbers are so arranged as to give some advantage to the smaller States. All members must be citizens of India and at least thirty years old. The Council is never dissolved, but one-third of its members retire every two years. The House of the People contains 500 members, who must be citizens over twenty-five years of age. They are directly elected by the people, and for this purpose the country is divided into territorial constituencies each of which must contain not less than 500,000 nor more than 750,000 people. Elections, both for this House and for the Legislative Assemblies of States are on the basis of adult suffrage and the whole of the electoral law is under the supervision of an Elections Commission, the Chief Commissioner being appointed by the President and removable only for misconduct at the request of a two-thirds majority in both Houses of Parliament.

There are in India certain tribes and castes who, by reason of lack of education, former oppression, or remoteness from modern life, need special protection. The constitution, looking toward the goal of real equality, does not group these people in special constituencies since that arrangement might make permanent their separation from the rest of the community. The concession which it makes towards present-day facts is to prescribe that in the House of the People, and the Legislative Assemblies of those States where this problem exists, a proportion of seats, commensurate with the numbers of these people, shall be reserved for these 'scheduled' tribes and castes. The 'scheduling' is done by the President, subject to Parliament's approval. The President may also, if he thinks fit, nominate two members of the Anglo-Indian community (persons of mixed European and Asian parentage) to sit in the House of the People.

A member of either House of Parliament loses his seat if he is absent for more than sixty days without permission, or if he is elected to the Legislative Assembly of any State.

Several sections of the constitution deal with Parliamentary procedure which, as is acknowledged, is closely modelled on that of the British House of Commons. The influence of British example is particularly noticeable in the rules concerning Parliamentary control of the raising and spending of money—notably the rule that proposals involving public expenditure can only be made on the Presi-

dent's (i.e. the Government's) recommendation. An interesting variation is that although Ministers must be members of one or other House of Parliament, they may speak in either. Money Bills may originate only in the House of the People; the Council of States has only fourteen days in which to consider them and power only to make recommendations which the House of the People can accept or reject. Other Bills may originate in either House; if a deadlock arises between the Houses it is settled by a majority vote in a Joint Sitting. The President may give or refuse his assent to any Bill; he may also return Bills, other than Money Bills, to Parliament with proposed amendments, but if Parliament passes the Bill again, with or without the amendments, it becomes law. In view of the President's constitutional relation to his Ministers, it would appear that these provisions do no more than give the Government an occasional opportunity of suggesting last-minute amendments.

The British device of delegating legislative power to Ministers is enlarged into a general power of the President to issue ordinances having the force of law. He may only do this when Parliament is not sitting, and the constitution provides that Parliament can never be out of session for more than six months at a stretch. Once Parliament assembles, the ordinances can only remain in force for another six weeks, and Parliament can invalidate them even before then by a majority vote of both Houses. India is a much larger and more varied country than Britain; communications are less satisfactory and the experience of Parliamentary government far less; these facts create the necessity for an exceptional degree of delegation of power to the Executive.

For all ordinary purposes the will of either House is expressed by a simple majority of those members present and voting. To alter the Constitution, however, a simple majority of *all* members and a two-thirds majority of those present and voting is required in both Houses. Further, if the amendment deals with the election of the President, the distribution of legislative power between the Union and the States, the executive power of either the Union or the States, the structure of the Judicature, the representation of the States in Parliament, or the process of amending the constitution, it cannot be made unless it is also supported by resolutions passed in the legislatures of at least half the States.

Seven States have legislatures containing an Assembly and a Council: the remainder have a Legislative Assembly only. Assemblies are elected by popular vote, with one member for every 75,000 of the population but may not contain less than sixty nor more than

500 members. Councils should be about one-quarter of the size of their Assemblies, but contain not less than forty members. One-third of a Council is elected by the Assembly, one-third by local authorities and one-sixth by people with a high educational qualification; the remaining members are nominated by the Governor. Over Money Bills, Councils have only such power as is possessed by the Council of States in the Union Parliament; if they reject any non-Money Bill, the Assembly may impose its will by passing the Bill again in a subsequent session. These Councils represent a compromise between the democratic principle and the often markedly undemocratic Second Chambers established in some of the provinces of British India by the Act of 1935. In general, the procedure of a State Legislature and its relations to its Executive, closely resemble those of the Union Parliament. The Governor has a power to make ordinances, and powers in respect to assent to Bills, similar to those of the President. He may also reserve Bills for the President's consideration, and must do this if the Bill appears to diminish the powers of the High Court of the State. The President may, as his Ministers advise, assent to or reject a reserved Bill, or return it to the State Legislature for further consideration.

The Judicature

The constitution establishes a Supreme Court for the Union and a High Court for each State. The Judges of all these courts are appointed by the President, retire at the age of sixty-five, and are only removable, before retirement, for misconduct and on an address having the same support in Parliament as is required for an amendment to the constitution. In the States, the establishment of inferior courts is a matter for the Governor; but the High Court exercises supervision over them, hears appeals from them and can transfer cases from them to itself. Appeals lie from the High Courts to the Supreme Court in all important civil cases, and in criminal cases involving an important point of law—in this respect it resembles the House of Lords. The Supreme Court has the further duty of trying cases that arise between States, or between States and the Union, and of interpreting and enforcing the constitution. This last point reminds us of the federal element in India's government. An Act of the Union Parliament could be declared invalid by the Supreme Court on the ground that it trespassed into the legislative field reserved to the States; but we have observed how limited that field is, and that it can, in time of emergency, be constitutionally invaded by the Parliament.

General

To the student of politics the importance of India is that she presents the largest example of the working of democratic institutions in a country which is geographically in Asia, educationally backward, industrially still—by comparison with the West—undeveloped, and politically uncommitted either to the Atlantic Alliance or the Communist group. On the success or failure of democracy there, depends, in a large measure, the future of mankind; and it would be unwise, as yet, to prophesy. Certainly India has so far done much to refute those who believed that independence and democracy were bound to result in chaos. The policy of the Indian government has been steadily directed towards increasing the internal cohesion of the country and developing its industries—this latter with a degree of direction by the State that reflects the socialist sympathies of many Indian statesmen. United and effective action has been made easier by the fact that the Congress has a huge majority in Parliament and either forms the government or predominates in the legislature in all the States. This party was in origin an alliance of Indians of all classes and many different political philosophies, to secure Indian independence. Its members are still united by a natural desire to prove that India can manage her own affairs; their views would, in a European country, have led them into conservative, liberal, or socialist parties. Congress may perhaps be compared to those coalitions which, in time of war or great emergency, have been formed even in a country with so highly-developed a party system as Britain.

Under this form of government India is trying to carry through, by democratic means, both an industrial revolution and a social revolution of a moderately Socialist character; if she succeeds, the world will be presented with an entirely new pattern of politics. Internally, her difficulties are the natural conservatism of the wealthier classes, the possible growth of Communism among the poorest if the rate of social change is not sufficiently rapid and the unwillingness of some of her more remote tribal populations to accept either the authority of the central government or the implications of 20th-century life. Externally, she has avowed her intention of remaining within the Commonwealth, partly because of her extensive trade with Britain, partly to watch the interests of Indians living in other Commonwealth countries, and partly because she believes that this link between Asia and the West is valuable for the maintenance of world peace. At the same time she maintains friendly relations with the USSR and China; although this causes Britain and the USA to regard her with

some distrust it has also—as in the settlement of the Korean conflict —enabled her to mediate between the rival *blocs*.

PAKISTAN

Origin and Nature of the Constitution

This constitution, like that of India, was framed by a constituent assembly whose members were influenced both by British political ideas and by the experience of British rule. There are, therefore, certain striking similarities between the Indian and Pakistani constitutions. Both provide for a Union of Provinces and States, and have a similar federal pattern; both contain 'fundamental rights' which the Supreme Court must uphold, and 'directive principles' which, though not enforceable, are meant to be influential; in both constitutions, these rights and principles display a firm attachment to conceptions of liberty and justice drawn from Britain and a general desire to move towards a semi-Socialist welfare state. The differences, however, are equally striking. Pakistan, with its 85,000,000 people, is a smaller, poorer, less industrialized and less modern country than India, and an even smaller proportion of its citizens are literate, or well-equipped to participate in democratic government. These difficulties threatened the new country from the start. In 1956 the Constitution was drastically revised: in 1958 it was set aside, and Pakistan came under military rule. A new Constitution may in time be established; we shall examine in this chapter the 1956 model.

This Constitution provides for a Federation of two Provinces, East and West Pakistan, separated by a vast stretch of Indian territory, and speaking different languages. In West Pakistan, certain States, formerly ruled by Princes, still exist in name but are in process of being absorbed into the government of the Province.

One uniting influence in Pakistan is the Moslem faith which the great majority of its people profess. It was the desire to preserve their faith either from persecution or from contamination by what they regarded as the idolatry of Hindu polytheism which caused the Moslems to insist on the partition of the Indian Empire. We find, therefore, that the constitution declares Pakistan to be an Islamic Republic in which all authority is subject to the supreme power of Allah throughout the universe.[1] Nor is this merely a pious formula; the constitution, in its directive principles and in a further section on 'Islamic Provisions' requires that an Institute of Islamic Research be

[1] The constitutions of certain Catholic States begin with a similar ascription of all power to Almighty God.

maintained by means of a tax on Moslems; that the teaching of the Islamic Scriptures be compulsory for Moslems; that Islamic moral standards, notably the reprobation of prostitution, gambling and alcoholic drink, be observed; and that a commission be appointed to study the Scriptures and report to the Federal and Provincial Legislatures as to how they may ensure that the laws they pass are in conformity with the doctrines of Islam. These sections were not inserted without protest from the non-Moslem minorities; but the constitution guarantees to them full freedom of worship and equality of civil and political rights and opportunities. If we may use, though with caution, a western term, we might say that Islam is the 'established church' of Pakistan—not requiring that all citizens should profess its faith, but enjoying in fact the support of most of them and exercising, throughout the nation, a preponderant influence on moral standards and ideas of right and wrong.

It is forcibly argued by many Moslems that Islam is a democratic creed. They have in mind the fact that, unlike Hinduism, it is not entangled with a system of division of mankind into castes. Further, its fierce rejection of anything resembling polytheism—of images, statues, demigods, worship of saints or any attempt to ascribe to a human being any part of the glory which belongs to Allah alone—may well predispose its followers to ideas of equality, since all differences between human beings are insignificant by comparison with their subjection to Allah. This interpretation is perhaps an attempt, such as all religious communities make, to stress those aspects of their faith which are most in conformity with modern social and political ideas. Both Indian and Pakistani constitutions provide for freedom of conscience and worship; both refer to such practical problems, arising from religion, as pilgrimages and places of worship; but, in the main, the Indian constitution's attitude to religion is cautious, lay and permissive; the Pakistani attitude is that of enthusiastic acceptance.

The Executive

The Head of the State is a President elected on the system of single transferable vote by the members of the National Assembly and the two Provincial Assemblies, each of these three bodies being of the same size. A Vice-President is elected by the National Assembly; both he and the President must be Moslems and at least forty years of age. They serve for a term of five years and may not be elected for more than two terms; they may be removed by impeachment if thirty members of the National Assembly prefer charges of mis-

conduct, which are upheld by a two-thirds majority. Neither of them may be members of either the National or a Provincial Assembly. The President must appoint as Prime Minister the person whom he thinks most likely to command the support of the National Assembly, and must follow the Prime Minister's advice as to the appointment of the rest of the Cabinet and other members of the Government. If anyone not a member of the National Assembly is appointed to a position in the Government he must, within six months, secure election to the Assembly if he is to remain in office. We have here the usual pattern of parliamentary cabinet government; the relations between the President and his Cabinet are similar, both in practice and in the terms in which they are described, to those which obtain in India.

This pattern is repeated in the Provinces, with a Governor appointed by the President for a maximum term of five years, but removable at his pleasure, and a Chief Minister and Cabinet who are members of and responsible to the Provincial Assembly. In general, the respective powers of the Federal and Provincial Executives are determined by the distribution of legislative power which will be described later, each authority being responsible for those matters about which its Assembly may make laws. There are, however, several provisions which ensure the subordination of the Provinces. The Federation may make grants or loans to the Provinces, and has control over borrowing by Provincial Governments; these matters are dealt with by a Finance Commission consisting of the Finance Ministers of the Federation and the Provinces and such other persons as the President may appoint. The Federation can give orders to the Provinces as to the action they are to take to secure the enforcement of Federal laws; it may also, if convenient, delegate to the provinces administrative powers and duties which properly belong to itself.

The creation of an impartial and efficient Civil Service is always, for a new country, an important and difficult task; and for Pakistan the difficulty is increased by the fact that in the past her people, particularly in West Pakistan, had been more attracted to military than to civil forms of public service. A Public Service Commission has now been established for the Federation, and similar commissions for each Province. The members of the Federal Commission are appointed by the President and can only be removed from office by the procedure required for removing a Judge of the Supreme Court; Provincial Commissions are appointed by the Governor and can only be removed by him on the recommendation of a bench of three judges. With this protection from political pressure, the Commissions

arrange for the recruitment and training of civil servants, and make recommendations concerning promotion and discipline.

The powers of the Executive can be greatly increased if the President proclaims a state of emergency. The proclamation must be submitted to the National Assembly as soon as it is practicable to summon that body; but the emergency might be such that the Assembly could not meet for some time. Once it has met it can decide either to end the state of emergency or to extend it as it thinks fit. During an emergency the 'fundamental rights' section of the constitution may be suspended; the Federation may give orders to the Provinces on any matter of administration; and the President may assume, or direct the Governor of the Province to assume, all authority in a Province except that which the Constitution expressly grants to the Legislature and the Courts. As an alternative to this form of emergency, the President, if he receives a report from the Governor of the Province that government there has broken down, may direct the Governor to assume all executive power in that Province; such a situation may be maintained for two months without, and for not more than six months with, the approval of the National Assembly. A third provision is for 'financial emergency' which may likewise be proclaimed by the President for two—or, with the approval of the National Assembly, six—months. During this time the Federal Government can direct the Provinces to take any measures—such as reduction of public expenditure—which it considers to be in the interests of 'financial propriety'.

The Legislature

The Federal Parliament consists of the President and a National Assembly of 300 members, 150 from each province, elected in single-member territorial constituencies by an electorate comprising all citizens over twenty-one years of age. In addition, for the next ten years, there are to be five women members from each Province, elected by the women voters; it is hoped that at the end of that time the status of women will have so improved as to make unnecessary this special protection of their interests. The President may also make regulations for the special representation of 'Special Areas', mainly in the mountainous frontier district of West Pakistan, inhabited by tribes which, in the past, required tactful handling by the British *Raj*. All members must be citizens who have passed their twenty-fifth year, and their seats are vacated if they are absent for more than sixty days without leave.

The Assembly has a maximum life of five years, but may be

dissolved at any time by the President. It must hold at least two sessions each year, of which one must be held in Dacca, in East Pakistan, and the other in Karachi, the capital; it must not be out of session for more than six consecutive months. The constitution prescribes some procedural rules for the Assembly, but does not, in this respect, rival the Indian constitution's wealth of detail; most of these matters are expressly left for the Assembly itself to determine. Both Indian and Pakistani constitutions, however, contain the same careful description of the procedure governing the raising and spending of public money. Proposals involving expenditure can only be made on the President's recommendation; taxes can only be levied by virtue of an Act of Parliament; the Government is required to make an annual 'Budget' statement of its expected expenditure and revenue, asking Parliament to grant the necessary money and authorize the resulting taxation. The statement must distinguish between 'Consolidated Fund charges'—e.g. the service of the public debt, the salary of the President and of Judges—which, whatever the policy of the Government are permanent obligations on the State, and other expenditure, the size and nature of which is a consequence of the policy of the Government of the day. Final authority to spend the money is conferred on the Government by an annual Appropriation Act, specifying the amounts approved and the purposes for which they may be used; and the whole process is under the supervision of the Comptroller and Auditor-General, who enjoys the irremovability of a judge. The detailed description of all these precautions in a written constitution is unfamiliar to British eyes; but the precautions themselves are those which the British have worked out over centuries and enshrined partly in written law and partly in Parliamentary practice.

Bills, except those which seek to alter the constitution, are passed by a simple majority of members present and voting, and sent to the President for his assent. Since his Ministers will be persons in political agreement with the majority of the Assembly, it is not to be expected that they will advise him to withhold assent. They may, however, advise him to return the Bill with suggested amendments; but if the Assembly pass it again, with or without amendments, he must then assent. This power to suggest amendments does not, however, apply to Money Bills.

Bills to amend the constitution require a simple majority of the whole membership of the Assembly and a two-thirds majority of those present and voting; this latter condition, however, is not required if the purpose of the amendment is to provide the Parlia-

ment with a Second House. When the constitution was drafted there did not appear to be sufficient grounds to justify the complications which always arise in two-chamber government. In most federations the Second Chamber has the duty of protecting the smaller provinces or states. Pakistan, however, has only two provinces, not vastly unequal in population (West Pakistan contains about 40% of the total population) and assured of equal representation in the Assembly. It was, however, thought prudent to make comparatively easy the creation of a Second Chamber, should the need subsequently be felt.

When Parliament is not sitting, the President has the power to make Ordinances having the force of law, and the rules governing this power are identical with those in the constitution of India.

Provincial Legislatures consist of the Governor and an Assembly of 300 ordinary members and ten women's representatives. The rules governing the election of a Provincial Assembly, the qualification of electors, the procedure for passing bills and for control of finance are the same as for the National Assembly. The Governor has a power to make ordinances analagous to that of the President, and he is in the same position with regard to assenting to bills. He may also reserve a Bill for the President's consideration; the President may give or withhold assent, or suggest amendments, but, in this last case, if the Assembly passes the Bill again, with or without the amendments, it becomes law.

The President may designate parts of either Province as 'excluded areas', to which the laws of the Provincial Assembly shall not apply unless they expressly say so. The Governor may also declare that only certain parts of Provincial laws shall apply to these areas; or he may make regulations for their government. This device is intended for the more remote and backward regions. The 'Special Areas' of West Pakistan are subject to similar provisions, save that any regulations made for them by the Governor require the President's approval, and the President may himself give directions for the administration of these areas.

The National Assembly has the sole power to pass laws concerning defence, foreign affairs, rights of citizenship, foreign and inter-provincial trade, currency and banking, postal service, shipping, aviation, commercial matters affecting more than one province, public industries, and nearly all forms of taxation except that on land and income from agriculture. Both the National and the Provincial Assemblies may legislate concerning the civil and criminal law, scientific research, the Press, labour questions, social and economic planning, the control of monopolies, migration between provinces,

and the iron and steel industry. Provincial Assemblies have the sole right to legislate on local government, education, police, the taxation of land and agricultural income, provincial communications, and the management of Moslem religious buildings and endowments. They have also to provide for the organization of courts of justice; but the power and nature of these courts are determined by Federal laws. 'Residual power' lies with the Provinces; that is to say, they have the sole power to legislate on any matter not specifically mentioned in the Constitution—but such matters are not likely to be numerous or important. During a state of emergency, or when the President has declared that government in a province has broken down, the National Assembly may legislate on matters normally reserved to the provinces.

If we study this distribution of powers, and set beside it the forms of administrative control which the Federation exercises over the Provinces, and the provisions for altering the constitution, we shall notice that, in law, Pakistan has a highly centralized form of federation; it is indeed doubtful whether a federal form of government would have been adopted if the two provinces had been a continuous stretch of territory. Their geographical separation, and the size and variety of the country, will probably mean that in practice the provinces will enjoy the largest degree of autonomy that is consistent with the constitution.

All elections for the National and Provincial Assemblies are under the supervision of an Elections Commission whose Chairman is appointed by the President and enjoys the irremovability of a Judge of the Supreme Court.

The Judicature

There is a Supreme Court of Pakistan, whose Judges are appointed by the President. They must retire at the age of sixty-five, but before that can only be removed by a Presidential order made in response to an address from the National Assembly which has the support of a majority of all members and of two-thirds of those present and voting. This Court decides such disputes between Provinces, or between the Federation and a Province, as involve a point of interpretation of the constitution. It hears appeals from the High Courts of Provinces in all cases involving constitutional questions, in civil cases of major importance, and in criminal cases if the High Court has set aside the decision of a lower court and sentenced the accused to death or transportation for life. It may also give advisory opinions on any matter referred to it by the President; this would, for example,

enable the Government to ascertain in advance whether legislation which it proposed to put before the National Assembly was within that body's constitutional powers.

Within each province, the provincial High Court is the supreme Judicial authority, exercising powers comparable to those of the High Court in England. The judges are appointed by the President after consultation with the Chief Justice of the Supreme Court, and may be removed only after an adverse report from the Supreme Court. The retiring age is sixty—earlier than that for the Supreme Court, which will, to some extent, be recruited by promotion of Judges from the High Courts.

None of these Courts has jurisdiction over the Special Areas, for which Parliament is to make such judicial provision as it sees fit.

General

Many difficulties beset Pakistan. The legacy of religious bitterness, and the Kashmir dispute strain its relations with India, and it has been inclined to cherish the connection with Britain as a counter-weight to Indian hostility. This policy, however, may expose Pakistan to the reproach that she is more subservient to the former Imperial power than is fitting for an Asian country; and a desire to avoid this reproach was one factor inducing her to become, though later than India, a Republic rather than a Dominion. Further, the frequent references in the constitution to the Special Areas remind us of the problem posed by the tribes of the North-West Frontier. Some of these are akin to some of the peoples of Afghanistan, and there has been an agitation either for their incorporation in Afghanistan, so as to give that country an outlet to the sea, or for the creation of a separate state called 'Pathanistan'. The possibility of Soviet support for Afghan claims, and of Communist propaganda among the poorer classes in Pakistan, give further cause for anxiety; and while West Pakistan is thus concerned with the USSR, East Pakistan, together with her neighbours in South-East Asia, watches uneasily the development of Communist China. A defence agreement with the United States gives Pakistan some reassurance, though at the cost of further straining her relations with the USSR. In foreign affairs, therefore, Pakistan is obliged to pursue a delicate and cautious policy, not always agreeable to some of the more fiery elements who favour, for example, a more militant policy over Kashmir. In home affairs, likewise, it is necessary to stress the doctrine of Islamic democracy and the need to reform land-ownership if the peasantry are to be dissuaded from Communism; but these ideas do not always find

support among the wealthier classes, whose influence in a country whose people have little education and are unused to self-government, is considerable. The combination of these problems has driven Pakistan to abandon, at least temporarily, its democratic institutions. One of the major questions now facing mankind is whether democracy—which can justly claim to be an extremely successful method of combining liberty, order and progress in an industrialized country with a homogeneous and literate population—can also unite a heterogeneous people and enable them to carry through the processes of industrialization and education which 20th-century life requires. Both India and Pakistan present us with confused and conflicting evidence on this question.

CEYLON

Origin and Nature of the Constitution

The first form of the constitution is contained in the Ceylon (Constitution) Order in Council made in 1946, which gave the island something approaching Dominion Status, though with certain limitations on its sovereignty. These were, however, removed by the Ceylon Independence Act of 1947, which, together with certain further Orders in Council, made the appropriate alterations in the Constitution. Since then, following the victory of the People's United Front at the elections in 1956, Ceylon has announced her intention to become a Republic, though the necessary constitutional changes have not yet been made. In what follows, therefore, the reader must substitute, for references to the Queen or Governor-General, references to a President whose constitutional position will probably be similar to that of the President of India.

The Executive

Executive power belongs to the Cabinet who are appointed by the Governor-General and must sit in one or other House of Parliament. The Minister of Justice must sit in the Senate, as must at least one other Minister. The number of Parliamentary Secretaries must not exceed the number of Ministers; this will ensure that there are not too many members, in what will be a small legislature, holding governmental posts and therefore having a direct interest in supporting the government of the day. Not more than two Parliamentary Secretaries may be in the Senate.

A unique provision is that certain senior Civil Servants—the Secretary to the Cabinet and the Permanent Secretary of each depart-

ment—are to be appointed by the Governor-General, rather than by the Prime Minister and his Cabinet colleagues. The appointment and control of the rest of the Civil Service is entrusted to a Public Service Commission appointed by the Governor-General.

The Legislature

The Parliament contains a Senate and a House of Representatives. The Senate consists of fifteen members appointed by the Governor-General and fifteen elected on a proportional representation system by the House of Representatives; every two years, one-third of each of these groups of fifteen retire, but may be re-elected or re-appointed. The House, with about 100 members, is elected by territorial constituencies whose boundaries are fixed by a Delimitation Commission of three persons 'not actively engaged in politics' appointed by the Governor-General. They are required to allot to each Province a number of seats determined mainly by population but with some regard to area. If they find in any Province a group united by some common interest—e.g. of race or religion—they are to draw the constituency boundaries in such a way as to enable that interest to be represented. Most constituencies return a single member, but some return two or more, and in these a form of proportional representation is used. The purpose of these rules is to give protection to minorities without either the complexities of a federal constitution or the device of 'communal electorates'—i.e. the avowed grouping of citizens, for electoral purposes, according to race or religion. Of the 7,000,000 people of Ceylon, the majority are Sinhalese by race, akin to the people of North India, but there is a considerable Tamil minority, some of whom came from South India centuries ago and others much more recently. While the Sinhalese are mostly Buddhist and the Tamil Hindu in religion, there are also people of Moorish and Malayan origin, most of whom are Moslems. Among the Sinhalese there is a distinction between those living in the more thickly-populated low-country area and those in the mountainous Kandyan region. It is with these differences in mind that the rules for delimitation have been made. The constitution does not specify what the qualifications for voters must be, but in fact there is adult suffrage, and every elector is also qualified for membership of either House, save that Senators must be over thirty-five years of age.

The Parliament has a maximum life of five years, but can be dissolved at any time by the Governor-General; a dissolution does not, however, affect the Senate. It must meet annually and the period between the end of one session and the beginning of the

next must not exceed four months. A few procedural rules, modelled on British practice, are embodied in the constitution.

Money Bills can originate only in the House of Representatives, and on the recommendation of a minister. The Senate must be allowed one month to discuss them, and can make amendments; at the end of that time they become law, senatorial amendments being incorporated in them only if the House has expressed its agreement. Other Bills can originate in either House; if the Senate rejects, or inserts unacceptable amendments into a Bill passed by the House of Representatives, that House can ensure that the Bill becomes law by passing it again next Session. In view of the way in which the Senate is composed, a Government with a majority in the House is not likely to have great difficulty with the Senate. The Royal Assent (and presumably the Presidential assent in future) is, as in Britain, automatic. The Constitution does contain a provision for the disallowance by the Queen of legislation which appears to injure the interests of holders of Ceylon Government securities; this power could only be exercised on the advice of Ceylon ministers, and will not survive the establishment of the Republic; its significance is no greater than that of the similar provisions in the New Zealand constitution.

There are two limitations on the sovereignty of Parliament. First, any law interfering with freedom of worship or establishing any kind of religious discrimination, will be void and not enforced by the Courts. Second, no law seeking to amend the constitution is valid unless at least two-thirds of the whole membership of the House of Representatives has voted in favour of it. It will be noticed that the first limitation could itself be removed by the process of constitutional amendment; and the two-thirds rule is almost as small a limitation as could be devised, if there is to be any check at all. The Ceylon constitution, though not, like those of Britain and New Zealand, completely flexible, is easily susceptible of amendment.

The Judicature

There is a Supreme Court whose Judges are appointed by the Governor-General and can be removed by him on an address from both Houses of Parliament; its powers and functions resemble those of the English Supreme Court of Judicature. The judges and magistrates of lesser courts are appointed and controlled by a Judicial Service Commission consisting of the Chief Justice, one other Judge of the Supreme Court and a third member who must be either a Judge or former Judge of that Court. The Minister of Justice has no

power over the courts; his duties are to answer questions in Parliament about the administration of Justice, to obtain from Parliament the necessary funds for this purpose, and to advise the Governor-General about the use of the right to pardon offenders or remit or reduce sentences.

General

At the beginning of independence the United National Party, which might be described as liberal, held power. It has since shrunk to a small group, and the parties which have now come to the fore lay more emphasis on the Asian character of the country, opposing what they judged to be the undue Western and Christian influences in the UNP administration. The People's United Front, describing itself as a democratic Socialist party, draws much of its support from the Sinhalese. It has come into conflict with groups representing the Tamils, particularly on its policy of making Sinhalese the only official language. Efforts to reconcile the two sections are likely to produce amendments to the Constitution in the direction of decentralized provincial government: proposals to change the country from a unitary to a Federal State are not likely to be accepted. When the People's United Front first came to power it announced, in addition to its Republican policy, a resolve to revise the defence agreements with Britain. Subsequently an agreement was made under which British defence establishments in Ceylon are to be withdrawn; but Britain and Ceylon will co-ordinate their foreign policies with those of other Commonwealth countries. Like the other Asian Republics in the Commonwealth, Ceylon is generally disposed to be on good terms with Britain and the West: but she does not wish to have her adherence taken for granted.

CHAPTER V

Commonwealth Comparisons

TO what extent are forms of government determined by the geography, economics and circumstances of each nation, and to what extent do they reflect beliefs about justice, order and liberty which human beings may hold irrespective of the race to which they belong or the surroundings in which they find themselves? Commonwealth Constitutions, which are an attempt to apply to widely different nations ideas first formulated in Britain, should help us in answering this question. At the outset, however, we must notice that British constitutional forms themselves are not static. From the time of the framing of the Canadian constitution in the 1860s to the recent establishment of the Asian Republics, these forms have developed in such a manner as to make democracy more complete and to encourage the promotion of social welfare and economic justice. This development is, indeed, no more than the most recent example of a centuries-old tendency in the English constitution—the tendency to preserve the stability of the state by enlarging the group which wielded power, enfranchising fresh classes and giving attention to their demands. Each successive Commonwealth constitution bears the mark of the stage in this development which Britain had reached at that time; if we studied these constitutions in ignorance of their dates, their text alone would enable us to arrange them in order of time. The Canadian constitution reflects a time when Britain was only beginning to accept the idea of democracy and when the traditional, monarchical, and aristocratic elements in her government were stronger than they are today. Accordingly, the Canadian executive is formally styled the Queen's Privy Council, though the reality of government by a Cabinet which forms only part of the Privy Council has to be admitted. The Senate is intended, like the House of Lords at that time, to wield equal power with the Lower House, and the senators—since a new country could scarcely be

provided with a hereditary legislature—hold their seats for life. In the event, neither this Senate nor the Lords have retained the position they then occupied. When the constitutions of Australia, New Zealand, and South Africa came to be framed, the executive was plainly described as a Cabinet and various devices were used to limit the powers of the Upper House. It is, for example, expressly precluded from dealing with finance, and in other matters it is granted a power, not of rejection, but of delay, with, in some circumstances, provision for the people to express, at an election, their judgment on the point in dispute. These arrangements reflect the general opinion in Britain, at that time, of the proper status of an Upper House, though it was not until some years later (1911) that this view was expressly included in the British constitution. By the time the Asian Republics were established the ideas of public enterprise, public ownership and the Welfare State had found more favour in Britain than ever before. Britain herself could adopt these ideas by ordinary legislation without altering her constitution; the Asian Republics adopt from the start constitutions which, in their declaration of principle, foreshadow and encourage legislation of this kind. There had, indeed, throughout the whole period, been a tendency for the function of the State to increase, and the need for an efficient and upright Civil Service became correspondingly greater. Accordingly, the provisions for recruitment, training and discipline of the Civil Service are more elaborate and careful in the later Commonwealth constitutions. There is a similar mounting emphasis on payment of members of the Government and the Legislature, together with provisions that legislators who neglect their work shall vacate their seats; this marks a movement away from the 19th-century British conception of government as a task for amateurs with private means. Britain herself has, though less enthusiastically, improved the payment of her legislators; and, though British MPs can neglect their work without automatically vacating their seats, the demands of the electorate and the general temper of public life ensure that they do not do so.

The most striking difference in constitutional forms within the Commonwealth—that between the Realms, which acknowledge subjection to the Crown, and the Republics, which do not—cannot, however, be regarded as a result of the different dates at which nationhood was achieved. India is not a Republic because she achieved independence later than Canada; her preference for the Republican form, and the length of time that elapsed before she became free, are both results of the differences of race and culture which separate her from Britain. It was easier for the British to

accept the idea of complete self-government for an overseas territory when the people concerned were, in race, language, religion and attitude to life akin to the British. Conversely, a people who differed from the British in these respects could not be expected to share their veneration for a British Royal Family. The emotions which sustain monarchy resemble those which unite a family; in the psychologists' language, a King is a 'father-figure', and monarchy is most likely to survive among peoples who are racially united. This difference apart, the constitutional relation of all the Commonwealth countries to Britain is now substantially the same. The concept of sovereign nations, voluntarily united in a Commonwealth, was given legal expression in the Statute of Westminster in 1931; since that date, the progressive adoption by the Realms of the various parts of that Statute have removed all but a few vestigial survivals of dependence on Britain. It has already been noticed that where these vestiges persist—as in the right of appeal to the Privy Council or the formal admission of the Crown's right to disallow legislation—they do so entirely at the pleasure of the Realm concerned.

Though constitutional differences within the Commonwealth are numerous and important, the general similarity of pattern is far more impressive. All Commonwealth countries have cabinet government; that is to say, executive power is vested in a group of persons who, while managing the main departments of State and framing general policy, are members of the legislature and collectively responsible to it. With the important exception of the non-European population in South Africa, the peoples of the Commonwealth all enjoy universal adult suffrage. Further, although the device of proportional representation is used for certain special purposes in some constitutions, the 'lower' (i.e. more powerful and more representative) house of the legislature is elected on a system not significantly different from that of Britain. From these arrangements it results that in each country the reality of power lies, between elections, in the hands of a majority party which monopolizes the executive and dominates the legislature. The exercise of power, however, is tempered by a regard for public opinion and the realization that at the next election the people can either renew its gift of power or transfer that gift to a rival party.

The strength of this form of government is that it keeps ultimate sovereignty in the hands of the people without subjecting the executive to such constant restraint as to impair its power of governing and dealing promptly with difficult situations. All forms of democratic government may be described as attempts to strike the right balance between the need for effective power in the hands of those

who govern and the right of the people to choose and control their rulers. The form now being examined—which might be labelled Parliamentary-Cabinet-Majority Party Government—tends, if anything, to favour the claims of efficiency; but this bias can be, and is, corrected by an element found in all the Commonwealth constitutions and derived from Britain. This is the insistence on the rule of law—the principle that the individual may be prevented from doing what he likes only by known rules either established by the practice of the Courts, or made in proper form by or under the authority of the legislature, and that he may be punished only for breaches of those rules and after he has been found guilty in the courts. The rule of law is buttressed by the independence of the courts and the irremovability, save for misconduct, of judges. All Commonwealth constitutions contain the provisions necessary to make the Judicature independent and to enable it to protect the individual from arbitrary action by the Executive: those of India and Pakistan further expressly assert the liberties of speech, worship, etc. which in Britain exist not by express declaration but as corollaries from the rule of law. The principle that judges should be irremovable has, in particular, been recognized as vital to preservation of law and liberty; further, it has proved so attractive that the later constitutions extend the irremovability to the Commissions which deal with the Civil Service, the conduct of elections and the drawing of constituency boundaries: for these matters, like the administration of justice, are among those which should be kept out of the strife of parties.

We may notice also how all the constitutions have had to solve the problem of reconciling the rule of law with the growth of State functions and need to delegate power, whether by the Orders in Council and Ministerial regulations commonly used in Britain, or the Presidential Ordinances of India and Pakistan. Clearly, the larger and more varied the country, and the more disturbed its past history, the greater the latitude which must, by these devices, be given to the Executive.

Further study of the constitutions will show another common factor, concerned as much with economic as with political considerations. In the past, the English Parliament achieved sovereignty by skilful and persistent use of the power to control money—to declare what taxes might be levied and to prescribe, in great detail, the purposes for which the money so raised might be spent. The financial procedure of the House of Commons, the office of Comptroller and Auditor-General, the establishment of the Consolidated Fund and the provision for the service of the National Debt are in origin

devices to make the Government dependent on Parliament and to safeguard citizens from illegal extortions. With the passage of time they have become also devices to ensure economy and promote that feeling of financial security which was essential to the growth of Capitalism in the 18th and 19th centuries. Outside Britain, the nations of the Commonwealth grew to maturity in a capitalist society, the prosperity of which was dependent on world-wide trade and investment, and to which, therefore, stability of currencies, honouring of debts and careful accounting were vital. It was particularly important for the Realms and Republics, with their great need of capital for the development of their resources, to observe these standards. It was to be expected that the Realms, many of whose statesmen were familiar with British practice, would follow British parliamentary procedure in this sphere, as in fact they have done. The Asian Republics, transplanting these ideas to less familiar surroundings, judged it wise to insert in their constitutions much detail of financial procedure which elsewhere in the Commonwealth is to be found either in ordinary laws or in the Standing Orders of the Legislature. Thus it happens that one of the most concise statements of the rules governing British parliamentary financial procedure is to be found in the constitution of Pakistan.

This concern with finance is not confined to the raising and spending of taxes, but extends to public borrowing. Every Commonwealth constitution contains some clauses designed to reassure those who lend money to the Government. Where a federal form of government prevails the Central Government has always power to limit borrowing by the constituent states, and in Australia this has been the framework within which most of the argument concerning the comparative rights of the States and the Federation has been conducted. In New Zealand and Ceylon a desire to encourage British—and foreign—investors—has led these countries to admit, at least in name, the right of the Crown to disallow legislation.

More recently, this respect for private property and investment has not prevented Commonwealth Governments from engaging in public enterprise nor from the compulsory acquisition of private property either for public purposes (as land for railways) or (as in India and New Zealand) in pursuit of a policy of nationalization. Nevertheless, either by practice or by explicit constitutional declaration, the right to adequate compensation has been admitted and entrusted to the protection of the Courts. The references to this subject in the Indian constitution are significant; they combine a clear intention to increase public ownership with a recognition of

existing property rights and a desire to dispel fears of harsh or arbitrary action. The political ideas underlying the Commonwealth constitutions are, in fact, compatible with either a Socialist or a Capitalist economy, with private or public ownership; they do, however, require that changes from private to public ownership should be conducted in legal form, with reasonable respect for existing rights, and at such rate as the electorate may decide.

An Executive strong enough to protect the community and to plan ahead for its welfare; a democratic franchise, to preserve the ultimate sovereignty of the people; a rule of law and an independent Judicature to safeguard the rights of the individual; a system of financial control designed to prevent both corruption and irresponsibility; an impartial Civil Service, able and willing to give practical effect to the policy of whatever Government the electorate may choose—these are the essentials of the Commonwealth constitutions. This type of government does not appear to be dependent on any particular set of circumstances. It has been established in five continents;[1] it can express itself through unitary or federal institutions, in highly industrialized or mainly agricultural communities: it can be used to implement Capitalist or Socialist policies. It was, however, first fashioned by a people happily free from any deep division among themselves in race, language, religion and culture. Based as it is on the ideas of reason and consent rather than compulsion, can it survive in countries where such divisions exist? The Commonwealth provides some evidence which may help to answer this question, since each country, outside Britain, contains some groups, large or small, which differ widely from the rest of the population. The various kinds of treatment accorded to these minority groups may be listed as separation, equality, special consideration, tutelage and subjection.

Red Indians in Canada may live either in their reserves pursuing their own way of life, and, because of their separation, undisturbed by the fact that they do not possess the rights of citizens; or they may enter the life of the nation, in which case they have the same political and civil rights as anyone else. Australian aborigines live almost entirely in separation, on a very low level of culture. Other non-white British subjects in Australia take part in the general life of the community but in a state of semi-subjection: they enjoy the private rights of citizens but have not got the vote or the right to take part in the

[1] If, for reasons given earlier, we exclude South Africa from the argument, we may still observe the recent emergence of the new Commonwealth nation of Ghana in West Africa.

government of their country. Both Canada and Australia take care to keep their minority problems on a small scale by restricting the immigration of people of Asian origin, though a number of these, who have been admitted, now enjoy full rights. In both these countries, then, the methods of equality, separation, and subjection are employed, but the numbers involved are too small for the employment of these methods to have any great effect on the development of political institutions.

New Zealand accords to the Maoris full and equal citizenship and makes special provision for them to exercise it by placing them in separate constituencies for Parliamentary elections. The same principles of equality and special electoral considerations are applied to the more complicated pattern of racial groups in Ceylon. Similar, though distinct, is the position of the French Canadians who are in all respects citizens of Canada with full rights. Their language and their right to control the education of their children is specially guaranteed in the Constitution; and since they are concentrated in the Province of Quebec, where they form the majority, the federal nature of the constitution and the guarantee of the rights of Provinces gives them further protection. These methods of handling the problem are, of course, fully consistent with parliamentary democracy and the rule of law; they are most easily applied where the cultural gap is not wide and where the minority groups are both able and willing to take a full part in the national life.

Pakistan and—to an even greater extent—India present the most complicated patterns found in the Commonwealth. Some of the separate groups are in a position like that of the French Canadians; they are able to exercise their equal citizen rights not because the constitution gives them special consideration as racial or linguistic minorities but because the constitution is federal, and a group which is a minority in the whole nation but a majority in a particular State is accordingly protected by the constitutional definition of the respective rights of the States and the whole Federation. Other minorities, however, such as the Scheduled Castes in India, are in a state of tutelage. Laws and regulations can be made for their government by a Legislature and an Executive in the choice and control of which they do not have as full a voice as their fellow-citizens. The constitution implies, however, that this condition is not meant to be permanent and that the ultimate status of these groups will be that of complete equality.

If India has the most complex problem, South Africa has the most difficult. Here only in the Commonwealth do we find a situation

where the group which is less advanced in culture, less educated and less capable of managing a modern state is not a minority but a substantial majority. The white population of New Zealand can accept the principle of racial equality in the knowledge that the traditions, habits and way of life of the community will continue to be those with which they are familiar. The white population of South Africa have no such assurance; for them, equality would mean that they themselves became a minority dependent on the goodwill of a formerly subject race. This fact, and the fears to which it gives rise, explain—though they do not justify—South Africa's decision to use the method of subjection. As has been shown in the last chapter, the policy of *apartheid* cannot in fact become one of separation: South Africa's economy could not survive if the black population all lived like Canadian Red Indians on reserves. As has also been shown, the policy of permanent subjection steadily drives the country's political institutions away from the principles of parliamentary democracy which prevail elsewhere in the Commonwealth.

In general, we may say that the Commonwealth is a group of nations united not only by their formal membership of the Commonwealth itself but by a common acceptance of the political principles and methods described above. These principles and methods are most easily applied in communities which are racially and culturally homogeneous; they can, however, be applied elsewhere if, either at once or in the measurable future, different groups are prepared to regard each other as equals; and the whole process can be facilitated by the use of federal constitutions, special electoral methods, and various forms of tutelage. Man's reason and conscience tell him that his best chance of a good life is to be found in the establishment of a form of government based on consent, equality of rights, and the rule of law; his emotions lead him to distrust those whose physical appearance, language and traditions differ from his own. Most of the Commonwealth tries to follow the former road; South Africa has chosen the latter. As other parts of the British Empire—e.g. Central Africa, Kenya—emerge as sovereign nations, they also will have to make this choice, some of them in circumstances as difficult as South Africa's. In the Central African Federation, whose powers of self-government, though wide, are not yet those of a Realm, there is a black majority, and it is an open question whether their status will prove to be one of tutelage leading to equality, or of subjection. In Britain, over centuries, a governing group which at first was small has progressively admitted more and more of its fellow-citizens; can the same process be carried through, and carried through by agree-

ment when the majority at present excluded from power is of a different race and colour from the ruling group? If, in Africa, it is shown that this can be done, mankind will have achieved over his own fears, suspicions and prejudices another of those victories which, in the past, have been the milestones of his progress.

CHAPTER VI

The United States of America

Origin and Nature of the Constitution

In 1776 the thirteen British colonies on the Atlantic coast of North America formally renounced their allegiance to Britain in the famous Declaration of Independence. During the war in which they made good their claim, and for some years thereafter, they were linked in a loose confederacy in which the powers of central government were so inadequate as to threaten the survival of the new nation. Conscious of this danger they began, in 1787, to frame, and in 1789 adopted the first seven articles of the present constitution of the United States of America. To the American people history had presented the central problem of politics—the reconciliation of effective power for the government with liberty for the individual—in its most simple and striking form. They had sought independence in protest against arbitrary government, against government which they could not help to choose, and against policies which restricted the individual's right to trade, acquire property, and enjoy 'life, liberty and the pursuit of happiness' as he saw fit; they were soon to find that independence could not be preserved without admitting a central government's right to some powers both over individuals and over the separate States which composed the nation. Their hearts rose against tyranny; their heads warned them against anarchy. The result is a constitution in which the idea of a nice balance between central government, States, and individuals is all-pervasive, but in which, in so far as the balance may diverge from the true, it will incline in favour of the individual. The problem of modern plutocratic democracies—how to prevent the exercise of rights by some individuals from invading the liberty of others—had only begun to cast a slight shadow in 1789.

The Americans had, none the less, to seek to express these ideas in forms which could not fail to be influenced by the British model with

which they were familiar. The concepts of nice balance and careful separation of powers, as safeguards against tyranny, were not native to the British constitution, in which, at first, the King's power was checked only by the ill-defined rules of feudalism: though by 1789 successive struggles had asserted the rule of law, the independence of the judicature and some conception of Parliament as a check on the Executive. The Americans, looking for what they wanted, seized on those parts of the British constitution which seemed most clearly to express the ideas of separation of powers and prevention of despotism. To this they had to add a further, federal, element, to safeguard the rights of States; and in the result produced a constitution which, though clearly akin to and derived from the British, was, from the start, less favourable to the claims of government. The British constitution distinguished in theory between an executive composed of the King and his Ministers and a legislature composed of the King in Parliament; but this distinction was already blurred and was to become ever less clear with the impact of the Cabinet and the party system on a flexible constitution. The Americans distinguished both in law and fact between the executive President and the legislative Congress; and since the American constitution was fully written out and capable of amendment only by special procedure, this distinction was to persist.

The original seven articles lay down, as briefly as possible, the structure of Executive, Legislature and Judicature which are the three branches of the Federal Government; they prescribe what powers this Government, as distinct from the States, shall enjoy; and they describe the process necessary for amending the constitution. They are, indeed, mainly concerned with the machinery of government and contain only three general propositions designed to prevent tyranny—the assertion of the right to the writ of *habeas corpus* except in time of rebellion or invasion, the prohibition of bills of attainder and *ex post facto* laws (i.e. laws imposing penalties for acts previously committed which were not, at the time of commission, illegal) and the provision that no religious test should be imposed on any person seeking public office. It was soon felt that the constitution did not give sufficient attention to principles of this kind, and in 1791 ten amendments, known collectively as the 'Bill of Rights' were added. By these amendments judicial provisions are made to prevent arbitrary arrest and to ensure trial by jury in all serious criminal or important civil cases; no one is to be punished save by due process of law nor tried twice for the same offence; accused persons must be confronted with the witnesses against them, must be provided with proper

facilities for their defence and must not be required to find excessive bail; even those found guilty must not be subjected to excessive fines nor 'cruel and unusual punishments'. The abuses here prohibited are those which had been practised against the English by James II a century earlier, and, to a lesser extent against the American colonists themselves by the British government. Experience had likewise warned the Americans of the danger to liberty implicit in a standing army; other articles therefore forbid the arbitrary billeting of troops on civilians, and assert 'the right of the people to keep and bear arms': later, in the huge polyglot cities of the 20th century, the Americans were to learn how dangerous to liberty and welfare the bearing of arms by private persons can be.

In two respects the American Bill of Rights goes further than English theory or practice at that date. The first article forbids Congress to create an established church or to interfere with the rights of free speech, publication, assembly or petitioning. The ninth asserts that the mention of specific rights in these articles shall not be assumed to disparage any other rights the people may possess, while the tenth states that any rights not specifically given to the Union are reserved to the several States or to the people. The nature of American federation is thus made clear; it is to be decentralized, with the residual power belonging to the separate States. The American constitution, unlike the Indian, does not set out the form of government to be used by the States, except to say (in the fourth article of the original seven) that it must be republican. Each State has its own constitution, either adapted from the practice of colonial times or created when the State was formed. Their forms of government must not conflict with the provisions of the Constitution: but this limitation is imposed in the interest of popular rights, and is as binding on the Federal, as on the State Governments.

The jealous guardianship of their rights by the States has been a feature of American politics, from the first mutual suspicions which influenced the Constitution itself to modern conflicts over the education of negroes or the right of Roosevelt's administration to engage in social and economic activity; and in consequence the decisions of the Supreme Court, which interprets the Constitution, have been a powerful force in determining the development of the United States. In 1861 the divergence of interest and opinion between the Southern States, where the 'peculiar institution' of slavery prevailed, and the rest of the nation was such that the Southern States attempted to secede from the Union. The resulting Civil War established once and for all that secession is not permissible; it was followed by three

amendments to the Constitution which prohibit slavery, assert that all persons born or naturalized in the United States are citizens entitled to the equal protection of the law, and declare that the right of citizens to vote cannot be 'denied or abridged by the United States, or by any State, on account of race, colour, or previous condition of servitude'. At her foundation America declared herself a constitutional republic: by the Civil War and by these amendments she resolved to become a multi-racial democracy. At the time, America was the only great country whose government could properly be described as democratic: if, by permitting secession, she had shown that a democratic government cannot enforce its authority; or if she had purchased unity by allowing slavery to become a permanent institution—then the idea of democracy would, as Lincoln foresaw, have 'perished from the earth'.

The ideas and problems of the 20th century are reflected in the Constitution only in the Sixteenth Amendment (1913) which permits the levying of nation-wide income tax, and the Nineteenth (1920) which declares that voting rights shall not be 'denied or abridged . . . on account of sex'—while the Eighteenth (1919) and the Twenty-First (1933), which repeals the Eighteenth, mark the beginning and end of the attempt to enforce Prohibition.

The amendments other than those so far mentioned have been made at various dates from 1798 to 1951. They make reforms, which experience had shown to be convenient, in the mechanics of government. The most significant is the last (XXII, 1951); its declaration that no one may be elected to the office of President more than twice voices the same concern, that too much power shall not come into the hands of one person, which was in the minds of the founders of the Constitution.

The following, then, are the characteristics of the American Constitution: it is written and comparatively rigid; it is federal, granting residual powers to the States; it prescribes a sharp separation of legislative, executive and judicial powers. It is as brief as such a document could be, concentrating on the essentials of governmental technique and avoiding, as far as possible, declarations of moral principle and social objective. Such declarations are not wholly avoided; but where they appear, as in the Bill of Rights and the post-Civil War amendments, they are concerned with the political and legal rights of individuals; it is assumed that if these are secured the individual can look after his own economic and moral welfare. In the words of the characteristic American wisecrack, 'The Constitution guarantees you the pursuit of happiness; you have to catch up with it

yourself'. The one attempt—Prohibition—to use the Constitution for a social purpose did not have such success as to encourage repetition.

This brevity in the original document has enabled it to survive nearly two centuries with so little amendment. By prescribing no more than the minimum essential for liberty and efficiency, the Constitution made possible the growth, in response to new needs, of a vast governmental structure whose details it neither prescribed nor prohibited, nor even mentioned. In consequence, the American Constitution tells us far less than the Indian about how the government really works; and it is to this that we must now turn our attention.

The Executive

The President, who is the Head both of the State and of the Government, is chosen by a college of electors to which each of the forty-nine states sends a group of electors equal in number to its total representation in the two Houses of the Legislature. Since each State is entitled to two seats in the Senate, and in the House of Representatives to a number varying, according to population, from Nevada's one to New York's forty-three, the result is a college that gives some advantage to the less populous states.[1] The original idea was that the electors would be wise men, trusted by their states to make a wise choice, but this soon became a fiction. Today they exercise no choice of their own; the citizens vote directly for one of the Presidential candidates and the electors merely declare the result of the popular vote. In the college, the votes of each state's group of electors are cast as a block; so the candidate who gets even a small majority of the popular votes cast in the state of New York is sure of forty-five votes in the college. If no candidate secures a majority of the 534 votes, a choice is made from the three highest on the list by the House of Representatives—but for this purpose the Representatives would be arranged in state groups, each group having one vote. A Vice-President is chosen at the same time and by the same method, except that in the absence of a clear majority the choice is made by the Senate from the two highest on the list. Candidates for both these offices must be citizens by birth, and over thirty-five years of age. They are elected for a four-year term, the election being held in November of each leap year.

If we take a map showing the distribution and occupations of the

[1] Nevada's population is less than one-fortieth of New York's: but Nevada has three votes in the college, to New York's forty-five, a proportion of 1 : 15.

people of the United States, and with it a map showing state boundaries and the numbers of Senators and Representatives from each state, we see the significance of this method of election. Three regions—the industrial and commercial North-East, the agricultural and industrial Middle-West, and the South with its peculiar traditions—each command a substantial number of votes; no one can hope to become President unless he has considerable support in at least two of them, and even so he will not be able to ignore the remaining, less thickly populated regions. On the other hand, since the votes of each state are cast as a block, the candidate must think not only of the total number of his supporters throughout the nation, but of the need to get a majority in a number of populous states; he must therefore be someone who combines wide popular appeal with the emphatic support of certain regions and interests. The effect of this on American politics is profound. The conflicting regional interests, the special loyalties of the many racial and national groups of which the population is composed, and the factor of class-conflict, might have produced a kaleidoscope of small sectional parties to the injury and division of the nation. The nature of the Presidential election obliges the parties to become broad coalitions seeking support from many different groups and anxious to offend as few as possible. If, in the result, there are such strange bedfellows inside each party that it is hard to say what principles or beliefs unite them, America is at least saved from the bitter strife that might result if every racial, regional or class grouping fought, in the political battle, for its own undiluted interest. In Britain, fundamental national unity is taken for granted; America has still to keep in mind the need to preserve it.

Under the President, the Executive is divided into ten Departments—the State Department (which deals with Foreign Affairs), the Treasury, Justice, the Post Office, the Interior (which deals with the preservation of natural resources, the Red Indian population, and those territories of the United States which lie outside the forty-nine States), Agriculture, Commerce, Labour, Defence, and Health Education and Welfare. The Heads of these Departments form the Cabinet, but three important considerations differentiate it from its British namesake. First, its members are emphatically the President's subordinates rather than his colleagues; if they all disagree with him he can still, secure in his four-year term of office, do what he thinks best; their dismissal or resignation will not shake his position as dissension in the British Cabinet might shake a Government. Second, its members, like the President himself, are not and cannot be mem-

bers of the Legislature. Once a year at least the President sends a message to Congress outlining his policy and urging them to pass appropriate legislation; his Cabinet and their subordinates constantly appear before the Committees of Congress to answer questions and to justify their 'appropriations'—i.e. the amounts of money they hope Congress will allow their Departments to spend; through the political party to which he belongs the President can influence some members of Congress and he will have frequent meetings with the chief Representatives and Senators of both parties. All these expedients, however, do not together give the degree of authority which a British Cabinet wields. That authority, it will be remembered, depends on the cohesion of the majority party in the Commons, to which party the Cabinet Ministers will belong. The American system, whereby President and Congress are elected and function separately, may well result in the President's party not having a majority in Congress; nor, even if it has, will it display the same cohesion as a British party. The American Executive, therefore, may frequently find its policy checked by the unwillingness of Congress to grant the necessary money or pass appropriate legislation. When this happens, the President must accept the situation and adapt his policy accordingly.

A third difference between American and British cabinets is that of size and composition. The ten Departments owe their existence to Acts of Congress; the number cannot be increased without further legislation, and the persons appointed by the President as Heads of Departments must be approved by the Senate. We see here the anxiety, felt when the Constitution was fashioned, lest the Executive should grow too large and too powerful. Yet America, like all modern states, has felt the need to expand the scope of government activity and to enable the Executive, especially in international and defence matters, to act speedily. This dilemma has been resolved by the creation of executive organs other than the ten Departments.

Chief of these organs is the President's Executive Office which contains: (i) The President's personal assistants and advisers who keep him in touch with the Departments, with Congress, and with the press and public opinion. (ii) The Bureau of the Budget which assembles the requests of all the various parts of the Executive for money and for legislation and endeavours to present them as a workable and acceptable programme for Congress. This Bureau also, like the British Treasury, studies and supervises organization and methods throughout the Executive. (iii) The Security Council, which tries to impose a consistent policy on all Departments in matters affecting defence. These bodies, each of which has its own subdivisions, have

grown up piecemeal and been successively added to the President's Executive Office. Legislation was needed to create them, but they are subject to less precise control by Congress than are the Cabinet Departments. On this matter no clear policy prevails; the appointments of some of the officials of the Executive Office require approval by the Senate, while others—e.g. the Directorship of the Budget Bureau—are at the President's discretion. It is in this Executive Office, rather than in the nominal Cabinet, that the task of giving coherence and consistency to government policy is performed. Yet its officials are, if we attempt to apply British categories to them, civil and military servants of the Government rather than statesmen deciding policy; their status is entirely that of advisers to the President. There is, then, no 'Cabinet Government' as the British understand it; in theory, and to a large extent in practice, responsibility devolves on one man, not on a group. For this reason some writers use the term 'Cabinet Government' to mean government on the British model, and describe the American system as 'Presidential Government'.

We must next notice the establishment, by successive Acts of Congress, of a large number of government agencies, corporations and commissions to deal with particular problems, such as the resettlement of ex-servicemen, the development of the Tennessee Valley, the checking of trusts and monopolies, central banking and civil aviation. Some of these may in time develop into Cabinet Departments—the latest Department, that of Health, Education and Welfare, came into being in this way; others disappear, having dealt with the problem that called them into being; many survive, exercising power to administer property, make regulations and settle disputes, in a manner which ignores the theory of separation of powers. Congress has by now established the principle that these instruments of executive power cannot be created except by law, and it exercises a final, though not a detailed control over them through its power to grant or refuse the money they need.

This apparently ramshackle method of fashioning the machinery of government is a response to American conditions. In their 200 years of nationhood the Americans have occupied so much new territory, made or used so many new scientific discoveries, and encountered so many new problems that, in consequence, they put their trust in improvization rather than permanence. There is a parallel here with the 19th-century British tendency to create *ad hoc* local authorities to deal with new problems, the scope and nature of which could not at first be fully apparent.

Several conflicting factors influence the recruitment of America's 3,000,000 Federal employees. First, there is the tradition that the party in power has a right and a duty to reward its supporters by giving them jobs,[1] which greatly influences Post Office appointments. Secondly, many of the higher posts involve work appropriate to a politician rather than to a civil servant. A member of the Cabinet, anxious that Congress should pass legislation needed by his Department, is less well placed than a British Minister. His standing in his party may be less than that of many of the Senators; there is no discipline by party whips on which he can rely; the legislators themselves will decide how long and how detailed their examination of his proposals shall be. In the elaborate process of negotiation with Congress he must be helped by his officials who will therefore need an intimate knowledge of politics and politicians which the British Civil Servant does not require. Thirdly, it is in accord with the spirit of the constitution that Senators, the special guardians of the rights of their States, should keep a watchful eye on the Executive. Not only does the law require that many senior appointments must be approved by the Senate as a whole; in addition, a practice has grown up whereby Senators, out of a loyalty to each other which transcends party, will agree to disallow the appointment of an official unless he is approved by the Senators of the state in which his work is to be done. These three factors all promote patronage in the public services; but as the work has grown and the degree of special knowledge required for it has increased, the need has been recognized to recruit and promote according to merit and to give the security of tenure and other conditions of service which will attract suitable people. The 'merit system', operating through a Civil Service Commission and the recruiting policies of the various government agencies and corporations, now governs the employment of the great majority of Federal employees and may in time become universal except for those posts which are, in their nature, political, and those departments where the tradition of patronage has taken the deepest roots.

The size and complexity of the Executive must not be allowed to obscure the unique position of the President. The simple words of the Constitution 'he shall take care that the laws be faithfully executed' place upon him, and not upon any subordinate, the powers and responsibilities in fact which belong in name to the Queen in Britain, so far as domestic affairs are concerned. The Queen must take

[1] Andrew Jackson, the first plebeian President, is sometimes blamed for this; in fact, he was obliged to make sweeping changes in the public services if his radical policies were to be implemented.

the advice her Ministers offer, and the responsibility for the quality of that advice is theirs; the President receives much advice but the power and responsibility of decision lie on him. Since there is a limit to what one man can do, he must often take advice and leave decisions to subordinates; but the extent to which he does this is for him to decide. In matters of foreign policy and defence his powers are, in name, more limited than those of the Queen. Only Congress can declare war, and the President can only make treaties with the approval of a two-thirds majority vote in the Senate. He is, however, commander-in-chief of the armed forces, and his duty to 'preserve, protect and defend the constitution' has been held to cover almost any executive act which he considers necessary to the preservation of the country.[1] America has to try to reconcile a balance of power between Executive and Legislature, with the need for an Executive sufficiently powerful to defend the country. The approval, by Congress, of the 'Eisenhower Doctrine' is part of this process: Congress gives the President power, in advance, to take military action in the Middle East in certain specified contingencies.

If the President dies or is incapacitated, his powers and duties devolve on the Vice-President until the next election. Apart from this, the only specified duty of the Vice-President is to preside over meetings of the Senate; what else he does is for the President to decide.

The Legislature

There are two Houses, the Senate and the House of Representatives. The former contains ninety-eight Senators, two from each State, elected for a term of six years, one-third retiring every two years. Senators must be at least thirty years of age, and must have been citizens for at least nine years. The total number of members of the House of Representatives can be varied with changes in the population, but has for some time been fixed at 436. They are apportioned among the states according to population, but with the proviso that if the franchise laws of any state exclude any proportion of its adult citizens from voting at Federal Elections, that state's representation in the House shall be correspondingly reduced. Representatives are elected for a term of two years; they must be at least twenty-five years of age and must have been citizens for at least seven years.

Subject to the Constitution, each State may make its own laws about qualifications for voting at elections for the Senate and the

[1] Before the abolition of slavery by constitutional amendment, Lincoln had already freed most of the slaves by proclamation, on the ground that this was necessary for the successful prosecution of the Civil War.

House, and indeed at any other election, State or Federal. State franchise laws cannot, for example, prevent a negro from voting because he is a negro, or a woman because she is a woman, since the Fifteenth and Nineteenth Amendments forbid such discrimination. They may, however, require a property or educational qualification, or the payment of a poll-tax. In the Southern States many such devices have been used to prevent negroes from voting, but the number of Southern negroes who have and exercise the vote is steadily increasing. As has been shown, a State which restricts its franchise may suffer diminution of its own representation in Congress. The Constitution further requires that anyone who is qualified to vote for the larger House of the state's own legislature is also qualified to vote at Senatorial elections. By one means and another, therefore, the Constitution encourages a wide franchise, and restriction of the right to vote is no longer a substantial impediment to democracy in America. A more serious problem is created by the method of drawing the boundaries of electoral districts for Congressional, State and local elections. There is not, as in Britain and several Commonwealth countries, any nation-wide law or impartial boundary commission to supervise this task. Each state makes its own arrangements; bondaries are often out of date, and have sometimes been drawn by interested persons in order to ensure victory for their party or sectional interest. The word 'gerrymandering' which describes this process, is derived from the name of an American politician.

For the American citizen, voting is a large and complicated task. Every leap year he can vote for a President and Vice-President, a member of the House of Representatives for the Congressional District in which he lives, and (in one-third of the States) for two Senators. In the intervening even-numbered years another one-third of the states choose Senators, and there is an election in all states for the House of Representatives. At all these elections the citizen will, at the same time, be asked to vote for members of the State Legislature, sometimes for a State Governor, and for members of municipal and local authorities. Further, many judicial offices—county judges, sheriffs, coroners, etc.—are, in many states, filled by popular election. The voting paper is a huge sheet, with many spaces to be filled in and the citizen may well shrink from trying to exercise his personal judgment in every case. This fact increases the influence of party organizations, and the arts of canvassing and getting voters to the poll have been highly developed. While, however, party organizations—and organizations supporting particular interests and individuals inside parties—are strong in each area, it has already been

noticed that, over the nation as a whole, the parties are loose coalitions and cannot compel Representatives and Senators in Congress to act as disciplined groups.

Lack of firm party discipline, and the fact that members of the Government cannot sit in Congress, have a profound effect on the organization and methods of Congressional work. There is not, as in the British Parliament, a coherent group of Ministers, presenting government policy and legislation and arranging, in consultation with an organized opposition, the time-table of business. All Representatives and Senators are what would be called in Britain 'Private Members' holding no governmental position, and the British distinction between Government Bills and Private Members' Bills does not exist. Many Bills are in fact recommended and drafted by the Executive, but a Representative or Senator must be found to sponsor them, and they compete for the available time with the thousands of Bills which, each session, are introduced by members of Congress often for no other purpose than to please their constituents. In Britain, a Bill involving expenditure of public money requires Government sponsorship before it can even be discussed; the absence of any such rule in Congress enables unlimited proposals for lavish expenditure in particular States and districts to be made. To deal with this situation the House of Representatives divides itself into committees, each dealing with a particular branch of governmental work, and reflecting, in their membership, the party composition of the House. As soon as a Bill has been presented by a Representative, it is referred to the appropriate Committee which, under the guidance of its Chairman, will decide in what order the Bills are to be considered. Many Bills perish because the Committee decides to do nothing about them; the rest it examines, hearing evidence from members of the Executive and from interested parties, and finally issuing a report. This report is considered by the whole House, sitting as a Committee of the Whole (a device borrowed from Britain) and at this stage amendments are made, either in pursuance of suggestions in the report or on the initiative of Representatives in the Committee of the Whole: from there the Bill goes to the House itself for a final debate, conparable to the Third Reading in the House of Commons. Procedure in the House is less formal than in Britain and the rule against irrelevancies is less strictly applied; it is indeed, only possible to get the business through by constant use of the closure. The whole arrangement of business is supervised by the House Rules Committee, on which the parties are proportionately represented.

Procedure in the Senate is similar, with the noteworthy exception that there is no provision for bringing a debate to an end and obliging a vote to be taken. Consequently, any small group of Senators can kill a Bill by 'filibustering'—i.e. by continuing to talk and obstruct until there is no time left. Frequently, the knowledge that this device will be used will cause Senators supporting a Bill to abandon their project. The chief significance of the 'filibuster' is that it has always prevented the passage of Bills for the effective protection of the civil rights of negroes in the Southern States: although the Senators for those States are in a minority they have always been able to have their own way in this matter. The demand for a change in the Senate's rules in this respect is growing in strength and may in time prevail.

In both House and Senate the influence of Committee Chairmen is considerable. They are chosen by the majority party and the usual practice is to appoint those Senators and Representatives who have held their seats for the longest periods. These tend to be those who have safe seats and are most firmly wedded to the traditional ideas of their party and locality. This fact, in the view of some observers, causes Congress to be, in comparison with the British Parliament, less responsive to changed circumstances and shifts in public opinion, so that the task of leading opinion in a new or critical situation falls mainly on the President.

Money Bills must start in the House of Representatives, but, like all other Bills they can be discussed and amended in both the House and the Senate, nor can any Bill become law without the concurrence of both. When disagreements occur a joint committee is sometimes appointed to resolve the differences, but there is no means by which one branch of the Legislative can override the other. Once passed by House and Senate, a Bill is presented to the President; if he signs it, it becomes law; if he vetoes it, it will only become law if it is passed again, and by a two-thirds majority, in House and Senate; if he does neither it becomes law after ten days, unless during that time Congress has adjourned, in which case the Bill perishes.

It is in the nature of the American Constitution that Congress, unlike the British Parliament, cannot overthrow the government: yet in practice its control over the Executive is far-reaching and detailed, and we may notice five ways in which it can be exercised. (1) *Finance.* Taxes can only be levied by virtue of Acts of Congress, and the Budget proposals of the Government are frequently altered both in size and nature in the course of Congress debates. Since any member of Congress can propose not only reductions but increases

in public expenditure, debates can be complicated by the efforts of Congressmen to advocate expenditures which will benefit their own constituencies; this is in contrast with the British rule whereby proposals involving a charge on public funds can only be made by the Government. The authority of Government Departments to spend money is derived from the yearly Appropriation Acts passed by Congress, and it is the duty of the General Accounting Office to see that Departments act in conformity with the law in this respect. This Office also audits the accounts of the Departments, and exercises general supervision of the finances of the various government agencies and corporations. At the head of the Office is the Comptroller-General of the United States, appointed by the President, with the approval of the Senate, for a term of fifteen years, during which he can only be removed for misconduct with the consent of both Houses. (2) *The Senate.* We have already noticed the power of this body over the making of treaties, and the individual and collective rights of Senators to control the appointment of ambassadors and senior public officials. We must remember, further, that the term of Senatorial office is six years, that any one pair of Senators represents a State and that a State is an entity containing either vast territory or great population, or both, and enjoying rights and powers guaranteed by the Constitution. These facts, taken together, give Senators a prestige which overshadows both the members of President's Cabinet and the Representatives in the other branch of Congress. The Senate is a unique example of a Second Chamber which has secured greater authority than the First. (3) *Relations with Ministers.* Congress's method of law-making is such that Ministers or their officials are constantly required to attend committees of Congress and to have their work subjected to detailed examination and criticism. A British Government harassed by Parliamentary criticism can use the Whips to check those of its own party and the threat of a dissolution to sober the Opposition; an American Government, not having these weapons, has more need to placate and compromise. (4) *Congressional Inquiries.* Both the House and the Senate make much use of their right to set up committees of inquiry into almost any problem. These committees may summon anyone to give evidence before them and in certain circumstances may punish refusal to answer questions as 'contempt of Congress'. There is a danger here that the legislature may, in defiance of the doctrine of separation of powers, unduly hamper the executive and arrogate to itself judicial functions. The power to punish recalcitrant witnesses may be so used as to violate the Fifth Amendment to the Constitution which requires that no one

may be compelled to incriminate himself. Recent excesses of this kind, arising from the campaign against suspected Communist activities, have caused a revulsion of public opinion and have been checked by appeal to the Supreme Court. (5) *Impeachment.* This is the power of the House of Representatives to bring the President or other high executive officer to trial before the Senate for 'treason, bribery, or other high crimes and misdemeanours'. Conviction, which requires a two-thirds majority vote of the Senators present, results in removal from office. This weapon has only been used twice, and both cases ended in acquittal. It is unlikely to be used again, but remains as a reserve power against gross abuses of office.[1]

Congress, like all legislatures in countries having 'written' constitutions, cannot be a sovereign body. The constitution limits its powers in two ways. First, it cannot pass laws which violate the civil and political liberties guaranteed in the constitution. Second, it can only legislate on those subjects expressly entrusted to it, rather than to the separate States. These subjects are:— foreign affairs, defence, currency, postal communications, copyright, bankruptcy, foreign trade, inter-state commerce, and the raising of taxes (which must be uniform throughout the United States) to provide for defence and the 'general welfare'. This last item, and the item of inter-state commerce have proved extremely elastic, and they have enabled Congress to pass laws dealing with trade, industry, agriculture, labour relations, etc. A nation-wide trade union, for example, will be subject both to the Taft-Hartley Act passed by Congress, and within each State, to the laws passed by that State. The chief fields in which the States exercise exclusive rights today are marriage laws, education, and the framing of their local government. The States cannot make treaties or alliances with each other or with foreign countries; they cannot maintain armed forces, coin money or issue notes. Neither Congress nor the States can impose any bar or taxation on trade between States.

Congress is responsible for the government of those territories of the United States which do not form part of any State—e.g. the District of Columbia, where Washington, the federal capital, is situated; Hawaii, which may in time become a State; and a few smaller territories. All of these enjoy such degree of self-government as Congress allows. An Act of Congress may admit new States to the Union, but the boundaries of existing States may not be altered without the consent both of their legislatures and of Congress.

[1] In Britain, impeachment is altogether obsolete: the House of Commons can always remove a Prime Minister by the simpler method of a Vote of Censure.

By a two-thirds majority of both Houses, Congress may propose amendments to the Constitution, but these do not become valid until they have been approved by the legislatures of three-fourths of the States; and an amendment which proposed to deprive any State of its equal voting power with other States in the Senate, would not be valid without that State's consent.

The Judicature

The law prevailing in America is the common law of England together with all the Acts which have been passed by Congress and State legislatures and are still in force. In the first instance, the duty of maintaining law and order, and ensuring justice between man and man devolves on the States, so that most civil suits and the most usual types of crime are dealt with by State Courts established by the legislature of each State in accordance with its constitution. The usual pattern is a structure of inferior and superior courts with a final court of appeal, comparable to that found in the nations of the British Commonwealth. A special American feature, however, is that judges and magistrates of inferior and intermediate courts are often elected officials serving for a fixed term. British tradition is averse to elected magistrates, for fear that, with an eye on the next election, they may shrink from giving unpopular decisions: but it should be remembered that the British are not entirely satisfied with their own system of appointing Justices of the Peace, in which the political parties play a part. Offences against federal laws—e.g. those concerning income-tax—disputes between States and sometimes between citizens of different States, come before the Federal Courts which have been constituted by Acts of Congress, in accordance with a duty imposed on Congress by the Constitution. For this purpose the country is divided into ten circuits, each of which has an Appeal Court and a number of District Courts. The judges are appointed by the President, with the approval of the Senate, and can be removed only by impeachment.

Above the State Courts established by State law and the Federal Courts established by Congress is the Supreme Court of the United States which is established by the Constitution itself. It consists of a Chief Justice and eight other judges, appointed and removable in the same manner as Federal judges. All nine sit together and reach their decisions by majority votes: these decisions are the final word on the interpretation of the laws and constitution of America. The exact definition of what cases may be brought, by appeal, to the Supreme Court, is a matter for Congress, but the general principle is that any

case involving the meaning of the constitution should go there. For example, a landlord lets property to a tenant on condition that none of it shall be sub-let to Negroes: the tenant does sub-let it, is sued by the landlord in a State court and loses the case. The tenant contends, however, that this involves a breach of the Fourteenth Amendment, which forbids any State to deny to anyone (negro or white) within its jurisdiction 'the equal protection of the law'. The Supreme Court rules that the Amendment concerns States, not individuals; and that therefore landlords and tenants can make agreements of this kind and observe them voluntarily if they wish, but cannot call on the law and the police to enforce them. This means that such agreements are, in fact, worthless: the case is one of many instances in which a major social and political question is decided from a particular lawsuit. Britain, and other countries with flexible constitutions, adapt themselves to changing needs and ideas by changing the law; in countries with more rigid constitutions, the Courts, by successive interpretations of what the constitution means, play a large part in this process of adaptation.

Two problems—race-relations and the right of the Government to deal with economic and social matters—have been notably affected by decisions of the Supreme Court. Some judges lean towards a strict interpretation which would hamper Government activity, as President Roosevelt found in the 1930s; others hold that the United States is not something static, but a living and growing organism and that the constitution must be liberally interpreted to meet new problems. A President can, over a period of time, influence the character of the Supreme Court by appointing, when vacancies occur, judges whose general outlook is similar to his own; but the Twenty-Second Amendment, which prevents anyone from being President for more than eight years, is some check on this process.

The right to pardon offenders convicted by the Courts, or to remit all or part of their punishment, is vested, for offenders against State laws, in the Governor of the State, and for other offenders, in the President. This right does not, however, extend to persons convicted by the process of impeachment.

General

Homogeneous states of moderate size can, without fear of disruption, enjoy democratic government with all the opportunity for argument and party conflict which it involves. Large and varied dominions may be held together by a tyranny which represses or roots out differences of opinion. America and India alone have succeeded in

practising democracy on a continental scale, and India has as yet only a few brief years of nationhood to set against America's two centuries. If we find America's system of government cumbrous and complex, or judge that her practice falls short of the high ideals of the Constitution, we should remember that the most remarkable thing about this country is that it exists at all as a united democracy. America has to unite people of different races, living in different climatic regions and pursuing widely different occupations; in a country where the pioneering tradition has created an atmosphere favourable to 'rugged individualism' and averse to governmental activity, she has to create the social services which all modern states have found necessary. Meanwhile, her rapid and spasmodic economic progress has created great differences of wealth between her citizens, and the growth of national wealth and power has thrust her into the forefront of world affairs.

The importance of the two-Party system in preserving national unity has already been noticed. At the beginning of American history there was a party cleavage between those who stressed the need for strong central government and those who championed the rights of the States; and even today the Republicans are in theory the heirs of the former, and the Democrats of the latter tradition. But the real function of the parties is to form great coalitions of interests, each with sufficient support in the whole nation to be capable of forming a government, and throughout the years the principles and programmes of parties have changed to meet new problems. Today, the Republicans represent mainly the industrialists and business men, the middle classes and the more conservative and individualistically-minded among all classes. The Democrats make an appeal to the working classes and to the 'small man' in industry and agriculture, yet they enjoy also the support of those in the Southern States who wish to preserve what is left of white supremacy over the Negro. Regionally, the Republicans are stronger in the North and East, and the Democrats in the South and West. Since the former are regions more concerned with manufacture for the home market, and the latter are more dependent on foreign trade, the Republicans are more inclined to high tariffs and isolationism and the Democrats more likely to favour a policy of international co-operation. All these generalizations, however, are criss-crossed by local and personal issues, and 'conservative' and 'liberal' groups are to be found in both parties. As, slowly but surely, the barriers to the full exercise of citizenship by Negroes are removed, it becomes increasingly apparent that there is no solid Negro vote adhering to either party. Since most

of them are poorer than the whites, class interest inclines them to the Democrats; but the Republicans, unembarrassed by any connection with the old Southern aristocracy, can go further than their rivals in proposals for legislation to ensure to the Negro his constitutional rights. The farmers of the Middle West search the programmes of both parties for what is said about maintaining the prices of agricultural produce. The Trade Unions, limited in—but not debarred from—political activity both by law and their own tradition, are more likely to favour the Democrats but have no formal or permanent link with that party.

In this situation the choice by either party of its candidates for national, State or local elections can arouse personal and ideological conflicts at least as keen as those between the parties. In some Southern States, for example, none but a Democrat can hope to be elected Governor, and the real conflict lies between 'conservative' and 'progressive' Democrats. Selection of candidates is therefore thought of as part of the whole electoral process and is called the 'primary' election. The laws of most States officially recognize the existence of parties and prescribe the method of conducting the primaries. Sometimes the citizen is invited to register himself with the party of his choice and so obtain the right to vote in its primary; or all citizens may be entitled first to decide, by vote, who the candidates of the various parties shall be, and later to choose between them at what British voters would regard as the 'real' election. The great party conventions which choose Presidential candidates are not regulated by law, but each has its own elaborate rules: these primaries arouse as much interest as the Presidential election itself.

If the party system is the first instrument whereby the Americans have made their political machine work we must next notice the long-term tendency both of public opinion and of Supreme Court decisions, to permit the Federal Government to increase its power and functions. Americans still assert their traditional belief that the individual has a right and duty to help himself, unhelped and unhampered by government; but the slump of the early 1930s greatly modified this view. Public enterprise, though but a small proportion of the whole American economy, is large in absolute amount and continues to grow. Provision for unemployment and old age, provided by the States with help from the Federal Government, is now universal though it varies both in amount and in efficiency of administration between different parts of the country; proposals for a national health service, comparable to the British, have so far been regarded as unduly 'socialist'. In all these matters the American is

even less doctrinaire and more pragmatic than the Englishman; public enterprises and social services arise here and there as Federal, State or City governments become aware of needs that can only be met by public action.

The wealth, power, and trading connections of America oblige her to take part in world affairs; and the search for a foreign policy is slowly operating as a unifying factor in the nation. Many Americans have an affection for England as the home of their ancestors; many others have a like regard for Germany, Ireland, Poland, Hungary, etc.; and the speeches of an American politician on foreign affairs may sometimes be understood by examining the ethnic origin of the voters on whom he relies. Among wealthy Americans, there are many who regard the world mainly as a place in which they should have a chance to expand their businesses and increase their fortunes. This is not to be dismissed merely as greed; it is intertwined with the American belief in individualism. The American with oil interests in the Middle East will regard competition from other private concerns as something which he understands: but if he is told to do this, or refrain from doing that, for 'reasons of state'—in order to placate Arab opinion, to prevent an outbreak of hostilities, to make it easier for his government to reach an understanding with Britain—he will regard it as paternalistic or tyrannical interference. Thus arise powerful 'lobbies'—groups with a strong sectional interest and little knowledge of the historical and political facts and fierce emotions which complicate foreign policy. In this atmosphere American statesmen have to try to create a coherent foreign policy. In recent years consultation between the President, the Secretary of State and the Congressional leaders of both parties has aimed at forming an agreed or 'bi-partisan' policy, but the Government's competence in applying the agreed principles has been a matter of debate in America, and the twists given to policy by the need to placate particular groups sometimes bewilder foreign observers. If America were a dictatorship her foreign policy would be more coherent and intelligible, but it is highly unlikely that it would be better.

America's politics, and her whole way of life, are coloured by the fact that here is a young nation, not far from the pioneering days, still receiving a steady, though restricted, flow of immigrants and established in a land where Nature has provided everything on a lavish scale. It is a rough-and-ready, masculine, flamboyant country inspired by a belief that if Jack wants to be as good as—or better and richer than—his master, he has every right to try. At their best these qualities produce vitality, love of freedom and rejection of snobbery;

at their worst they produce brutality, greed, boasting and a tolerance of lawless and uncivilized behaviour. Novelty has more appeal than tradition and voluntary co-operation for immediate and obvious ends is more attractive than the permanent authority of government.

The American workman, for example, readily joins a Trade Union and labour disputes are more frequent and more roughly conducted than in Britain. He accepts, more willingly than his British counterpart, new machinery and new methods. In general, though less than formerly, he is averse to political action by his Union: there is no parallel, in Congress, to the block of Trade Union MPs at Westminster. In the eyes of most Americans politics is a job like any other and people presumably go into it, as they go into other jobs, to make money. Most American legislators are middle-class business men or lawyers, practical and unscholarly, with more knowledge of certain particular interests than of the art of government as a whole; and this fact breeds some distrust between them and the trained Civil Servants with good university education whom the Government now finds it necessary to employ in increasing numbers. Yet though Congress is a more solidly middle-class assembly than the House of Commons, a survey of the occupations of Congressmen's fathers of both parties would show more working-class origins than could be found among British Conservative MPs. America is still a country of great social mobility; it has no real counterpart to the Public Schools which separate classes and influence public life in Britain; speech, manners, and outward signs of class count for less and one's own qualities—even if it be only the quality of acquisitive energy—count for more.

There is some evidence that in all these respects America is changing. The wealthier classes are acquiring some of the characteristics of a social aristocracy; there are signs that opportunity is less open than formerly to those of humble birth. At the same time social services and trade union participation in politics are increasing and public education, if at the lower levels somewhat unacademic, is abundantly provided. These are two opposite tendencies; but they may, for a long time, continue to operate side by side. In the past, the poor and unschooled immigrant might rise to the greatest wealth or continue in great poverty. In the future, a more settled economy and a more rigid social structure make a spectacular rise less likely; yet his Trade Union and his Government may give him greater chance of obtaining a secure and dignified position.

Both the British and the American systems of government seek to

maintain democracy, the rule of law and the liberty of the individual; both have partially accepted, though in different degrees, the use of the political machine for social and economic ends. The differences between them disclose the truth that the same standard of values may be observed and the same objectives pursued by different methods, each adapted by the facts of history and geography. The main differences are (1) Britain is unitary and America federal: America's adoption of the more complicated system was, and still is, the necessary price for holding together a larger and more varied country. (2) Britain's constitution is flexible and only partly written; America's is fully set out and comparatively rigid. This second difference is a consequence of the first; without a written constitution the units in a federation cannot be assured of their rights. Nor, indeed, would it be easy to bring a new nation into being and persuade its citizens to accept the authority of a government without some explicit statement of what the powers of that government, and the rights of citizens were to be. (3) Britain has a cabinet system, fusing the legislature and the executive, America a presidential system emphasizing the separation of these powers. For our purposes the main question is not why this difference arose—interesting though that is to historians—but why it persists, with each country still preferring its own method. The British, for all their jeers at politicians, fundamentally respect the need for government. Whether it was for restraining unruly feudal lords, for protecting a small island against continental powers, for governing an Empire or for framing modern social services, the British have wanted a government that could be effective, and a group of persons who, being endowed with full power, could be held fully responsible. This is exactly what Cabinet Government provides. The Americans, for all their love of country and respect for the flag, admitted only reluctantly the need for government. They began their life as a nation in protest against government; once assured of their independence they had no fear of invasion; in a country of such vast opportunity the individual was confident that he could look after himself, with government providing the minimum essential framework of law. To a people so minded the frustration which the presidential system can impose on legislature and executive is a virtue. If the President cannot carry out his policy without conciliating Senators So-and-So and Such-and-Such; and if those Senators will only be conciliated if they get what they want for certain American citizens living in their States—then so much the better for American citizens. We speak of 'American citizens' but 'British subjects'; and the difference is more than formal. In a democracy everyone should

be both subject and citizen—subject to the law which as citizen he has helped to make. The British have decided that by admitting their allegiance as subjects they can ensure their rights as citizens; to Americans, subjection to the jurisdiction of the United States is a facet of citizenship.

CHAPTER VII

The German Federal Republic

Origin and Nature of the Constitution

For many centuries the German-speaking people lived in separate States: the bond of the Holy Roman Empire was not strong enough to provide them with a common economic policy nor even to prevent them making wars on each other. When, in 1871, the German Empire emerged as a Sovereign State she found that other nations, which had achieved their unity earlier, had used this advantage to acquire Empires on such a scale as to leave little room in the world to follow their example. This partly explains the tendency of the Germans to glorify military power and pursue aggressive policies at a time when the rest of mankind had begun to turn from power to welfare and to seek peaceful methods of settling disputes. After her first defeat, in 1918, Germany attempted, in the Weimar Republic,[1] to find a peaceful and democratic way of life. There were, however, too many Germans either unable or unwilling to make democracy work; this fact, combined with the economic difficulties of the 1930s, the unwisdom of other nations, and the diabolic genius of Adolf Hitler, produced a tyranny more efficient and cruel, a war more terrible, and a defeat more absolute than any of which history holds record.

After their victory, Britain, France, America and Russia at first governed all Germany in concert; but their dissensions led to a division of the country into West Germany containing 48,000,000 and East Germany containing 18,000,000 people. The city of Berlin, though situated in East Germany, was similarly divided. East Germany, now known as the German Democratic Republic, is a Communist State under Russian control. In West Germany the Western Allies first promoted local and provincial self-government, and in 1948 each provincial assembly (*Landtag*) sent delegates to a

[1] So called after the town where the Constitution was drafted.

Parliamentary Council. The Basic Law drafted by this body was ratified by the *Landtaege* and came into force in May 1949.

Remembering their past the Germans were anxious to show their opposition to tyranny at home and aggression abroad. On another matter they were less certain. There were some who held that Germany should be a loosely-knit federation, since a strong central government could be an instrument for tyranny. Others argued that weakness at the centre would frustrate the traditional desire for German unity and produce a government incapable of handling its problems, and that these defects might be exploited by a future demagogue as Hitler had exploited those of the Weimar Republic. All were agreed that, while any thought of a war of revenge and reconquest must be renounced, the door must be left open for the peaceful reunification of all Germany.

These ideas find emphatic expression in the Basic Law. Its Preamble and concluding Articles stress the hope of unity and the transitional nature of the present constitution, which is described as having been framed only by those provinces now in West Germany. The Preamble further mentions Germany's desire to work, as part of a united Europe, for world peace: Articles 24 and 25 proclaim Germany's respect for international law, and her desire to join a system of international collective security and arbitration, and Article 26 stigmatizes as unconstitutional and criminal any activities tending to disturb the peace of the world.

The revulsion against tyranny appears in the first Section, the nineteen Articles of which enumerate basic rights. Most of these are such as we have found in other constitutions: inviolability of person, right to full development of personality, freedom of worship and expression, freedom to hold meetings and form associations, equal rights for both sexes and all races and creeds. Further, certain special abuses of the Hitlerite period—the regimenting of labour, spying on citizens, breaking-up of families and the perversion of education—are dealt with by Articles which guarantee freedom of movement and free choice of work, which prohibit the searching of homes or the reading of private letters except under proper legal procedure, and which assert the prime right and duty of parents to care for their children, the State having the task of protecting and 'watching over' this activity. Article 7 places the entire educational system under State supervision, provides within that system both secular and denominational schools, between which parents may freely choose, and gives a limited scope to private schools. Academic freedom for those engaged in all stages of teaching is assured, provided they are

loyal to the constitution. In all this we notice an anxiety to shun Nazi regimentation and at the same time to prevent the growth of private schools such as were to be found in the Weimar Republic, which were seminaries of militarism.

The Weimar Republic had indeed been so anxious to grant liberty in all directions that it had not distinguished between legitimate political activity and the efforts of those who were using the rights granted by democracy to overthrow democracy itself. Political parties became uniformed armies, freedom of speech became incitement to violence. Mindful of this, the Basic Law states that whoever abuses the Basic Rights in this manner shall forfeit them, and declares unconstitutional any political party which shows by its aims, behaviour, or internal organization that it is opposed to democratic principles. Here is stated explicitly the principle that democratic freedoms can only be claimed, as of right, by those who believe in them and would extend them to others—a principle which all democracies, save those so stable that they need not fear subversion, must observe in practice. Even Britain, during the war, suppressed the Fascist and Communist Parties. In Germany, the Communist Party and a neo-Nazi Party have been suppressed in accordance with this part of the Basic Law. Concerning property, the Basic Law is anxious to prevent confiscations of the kind practised by the Nazis against their political opponents, but at the same time to make possible legitimate extensions of public ownership. The rights of property and inheritance are therefore guaranteed, but their extent can be determined by law; it is further laid down that property involves obligations and that it must be so used as to promote the welfare of the community as well as that of its owner. The socialization of land and industries is permitted, provided that compensation is paid which is fair both to the public and the former owner: if disputes arise about compensation, there is to be appeal to the courts.

Having set out these Basic Rights, the Basic Law describes Germany as a 'democratic and social federal state'—a Federation (*Bund*) consisting of Lands (*Laender*). Significantly, the word *Reich* ('realm' or 'empire'), which even the Weimar Republic had used to describe the whole of Germany as distinct from its component parts, is dropped because of its Imperial and Nazi implications. The word *Laender*, rather than *Staaten* (States) reminds us that real sovereignty lies in the Federation and not in the Lands. Already, since the Basic Law was passed, use has been made of certain temporary provisions in it to redraw the boundaries of some Lands, and reduce their number from eleven to nine; future alterations may be made by

federal laws, provided that they are approved by both Houses of the Legislature—a condition not required for most legislation.

The relation between the Federation and the Lands resembles that between the American Federal Government and the States. The constitutions of the Lands must be republican, democratic and social: for the government of the Lands themselves and for the local authorities within them 'the people must have a representative assembly resulting from universal, direct, free, equal and secret elections'; the rights described in the Basic Law must be respected, and the rights and duties of all Germans are to be the same in each Land. Subject to these provisions, the Lands frame their own constitutions: like American States, they have the residual power, the only limitations on them being those expressly stated in the Basic Law. If, however, they transgress this Law, or fail in their duties, the Federation may, with the approval of the Bundesrat (Federal Council) exercise the necessary compulsion, and may, for this purpose, give orders to any Land.

The working out of these federal principles will become apparent as we examine the Executive and the Legislature. We should, however, notice in advance three distinguishing features of the German Federation. First, the Bundesrat—the House of Legislature designed to guard the interests of the Lands—is composed, not of directly elected persons but of members of the Land governments: it is a Council with a watching brief rather than a full partner in the Legislature. Second, the arrangements for the carrying out of the laws are laid down in such detail as to make it impossible for a Land, by negligence or hostility, to nullify federal legislation. Third, although there is, as is usual, provision for altering parts of the Basic Law, those Articles of it which describe the Basic Rights and which declare Germany to be a federal and not a unitary State, cannot be altered by any process whatever. On the whole, in the conflict between centralizers and decentralizers in framing the Basic Law, the former were more successful, and made Germany a tight rather than a loose federation; but their opponents secured that she could never become a unitary state. The special protection of the Basic Rights is further emphasized by the choice of the word *Grundgesetz* (Basic Law) rather than *Verfassung* (Constitution). The latter word suggests artificial creation; the former expresses the belief that human law should be based on eternal moral principles.

The Executive

The Head of State is the Federal President who must be a German

citizen who has reached the age of forty. He is elected by a Federal Convention consisting of all the members of the Bundestag (Federal Assembly—the popular House of Legislature) and an equal number of persons chosen by the popular Houses in the Land Legislatures, by proportional representation. The Convention votes without discussion and is, at first, required to elect a candidate by an absolute majority of all its members: but if, after two ballots, it has failed to do this, a third vote is held and the candidate with most votes is elected. Once elected, the President cannot be a member of any Federal or Land legislature or government, nor may he pursue any other occupation. He holds office for five years, and may not be immediately re-elected more than once. If he violates the Basic Law or any other federal law he may be impeached on a motion introduced by one-quarter, and approved by two-thirds of the members of the Bundestag: the Bundesrat has the same power, operated by one-quarter and two-thirds of its votes, respectively. The impeachment is heard not, as in Britain and America, by a House of Legislature, but by the Federal Constitutional Court: if the Court finds the President guilty, he forfeits his office.

Like all Heads of State, the President is the person in whose name the international affairs of his country are conducted. He may conclude treaties, but in so far as these may require legislation to make them effective, the consent of the Legislature will be necessary; and if a treaty is likely to have a special effect on a particular Land, that Land must have the opportunity to express its opinion. He appoints Ministers, judges and officials, and can pardon offenders. In all these matters, however, he must act in accordance with the advice of his Ministers.

Real executive power, therefore, lies with the Ministers and particularly with their chief, the Federal Chancellor. As soon as a newly-elected Bundestag assembles, the Federal President proposes a candidate as Chancellor and the Bundestag vote, without discussion, on this proposal. If a majority of members approve the President's candidate, the President appoints him Chancellor. If they do not, the Bundestag may then, within the next fourteen days, elect a Chancellor, if they can, by a clear majority. Should they fail to do this within the fourteen days they must then forthwith take a vote; if, then, one candidate gets a clear majority, the President must appoint him; if not, the President must either appoint the candidate who has got most votes, or must dissolve the Bundestag, presumably in the hope that a new Bundestag will be able to reach a majority decision. The Bundestag may remove a Chancellor from office by

what has come to be called a 'constructive' vote of no confidence—i.e. a vote which names a successor to the office who has the confidence of a majority of members. If the Chancellor, wanting to test his position, asks for a vote of confidence and does not get it, he may, within the next twenty-one days, advise the President to dissolve the Bundestag; but if, before he has given such advice, the Bundestag elects a successor by a clear majority, the President must appoint the person they have chosen. In all these proceedings, 'majority' means a majority of the statutory number of members, not merely of those present and voting.

The clear purpose of these arrangements is to ensure that, while the Bundestag has the real power to choose the Chancellor, it must use that power responsibly; to preclude situations in which the nominal Government is without the power to govern; and to encourage the Bundestag so to arrange itself that the Government of the day is normally one which can rely on a majority in the legislature. These results are most easily obtained if there is something like a two-party system, with clearly defined blocks of Government and Opposition supporters; and this is in fact what has arisen. Given this condition, the German arrangements for relations between Executive and Legislature closely resemble the British. When a Vote of Censure is debated in the British Parliament it is, in form, merely an expression of no confidence in Government: but everyone knows that if it were carried the result would be either a General Election or the resignation of the Government and the appointment of the Leader of the Opposition and his colleagues in their places. The German plan states explicitly what, in Britain, is implicit. By so doing, however, it somewhat enhances the authority of the Legislature: and this is further emphasized by the provision that the tenure of office of a Chancellor automatically ends with the election of a new Bundestag.

When the Federal President, in the first instance, nominates a Chancellor, and when, on the occasions described, he has to decide whether to dissolve the Bundestag or to see whether a workable Government can be found from its present membership, he has to exercise more personal power of political choice than is expected of the Queen in Britain; and the fact that he is likely to be a former politician may make him more inclined to form his own views and urge them, in private, on the Chancellor: but in essence his relation to his advisers is that of a constitutional monarch.

Ministers other than the Chancellor are appointed in fact by him and in form by the President; one of them is named as the Chancellor's deputy. They are clearly his subordinates, since they can be

dismissed by the President on his advice, and a change of Chancellor involves the resignation of all Ministers. They are responsible for the conduct of their Departments within the limits of the general policy laid down by the Chancellor, and disagreements between them are settled by him. This is a Cabinet system on the British model, though giving slightly more explicit authority to the chief minister. The details of its working are embodied in Rules of Procedure which require the President's approval. The Basic Law does not oblige Ministers to be members of the Bundestag, but this is the usual practice, and the Bundestag may in any case require their attendance at any time. Conversely, Ministers have the right to attend and take part in the debates of Bundestag and Bundesrat.

The servants, both civil and military, of German Governments have always been famed for their efficiency, whatever mankind may have thought of the policies they were required to execute. In re-creating its services the new Germany was hampered by the fact that, in 1945, there were few people experienced in administration who were not tainted with Nazism, and the attempt to exclude former Nazis was not wholly successful. However, a new generation is being recruited; the German Civil Service, like the British, recruits its new entrants, according to their education, into separate grades between which promotion is unusual. Officials whose work is to be done in a particular Land will usually be chosen from citizens of that Land; and to fill the highest grades the Government is required to select from all Lands in 'equitable ratio'. As a safeguard against the growth of bureaucratic power, the Basic Law requires that if an official does an injury of any kind to a citizen, that citizen may claim damages from the state: and if the injury is done not merely through error but through malice or gross negligence, action may be brought against the official. While matters of this kind may be settled administratively between the citizen and the Government Department concerned, the dissatisfied citizen may not be denied appeal to the Courts. In Britain a public servant of any kind who commits a legal wrong against a citizen is subject to the ordinary process of law; in many continental countries it has long been the practice to create special procedure for complaints against officials. This practice does not, as some British critics have feared, necessarily turn officials into a privileged class: indeed, the special courts may be able to deal with complaints more speedily than the fair but sometimes slow procedure in Britain. The German rule that 'appeal to the ordinary courts must not be excluded' both allows the continental practice but inserts a final safeguard for the Rule of Law.

There is no reference in the Basic Law to armed forces since these were not permitted to Germany in 1949. The subsequent agreement, between Germany and the Western Allies, that she might rearm, was made with misgivings on both sides. The Allies had not forgotten the war, and many Germans wondered whether they could, this time, discover how to possess armed forces without allowing them to dominate the state and set the whole nation's standard of values. The federal laws which have since been passed creating a Ministry of Defence and armed forces have been drafted with great care to secure the subordination of military to civil power. Soldiers are to be instructed in their rights and duties as citizens of a democracy; and an official, enjoying the irremovability of a judge, is appointed by the Legislature to supervise the armed forces, to hear the complaints of servicemen and to report to the Legislature.

The Basic Law divides the task of seeing that federal laws are carried out between the Federation and the Lands. The foreign service, defence, finance, railways, shipping and posts are to be directly administered by the Federation through Government Departments. The Federation may create 'public law corporations'—comparable to the Boards of the nationalized industries in Britain or the many Agencies of the American Executive—to administer social insurance or any new functions which federal laws may confer on the Government. These corporations will normally confine themselves to high level administration, leaving to the Lands the local and detailed working of the service for which they are responsible; they may, however, extend their activities downwards if there is urgent need and if both Houses of the Legislature approve.

Apart from these matters, the day-to-day execution of the laws rests with the Lands. The Federal Government exercises supervision to ensure that the laws are in fact obeyed and issues general administrative instructions; and its powers may be enlarged by federal legislation approved by the Bundesrat. If a Land fails in its duty the Federal Government can compel obedience if it can first get a decision from the Bundesrat that the Land has broken the laws; but appeal lies from the Bundesrat's decision to the Federal Constitutional Court. In this whole process of administration, the Federal Government must normally communicate with the highest authorities in the Lands, and not go over their heads to subordinate officials; exceptions to this rule require the approval of the Bundesrat.

It is too early yet to pronounce on the working of this most complicated system. Its general tendency is to decentralize and, probably, to make difficult any increases in the powers and functions of Govern-

ment. It must be read together with the lists, given later, of subjects on which the Federation and the Lands, respectively, may legislate. Yet even in those matters about which the Federation may pass laws, it must largely rely on the goodwill of Land Governments to get them carried out. True, there is in the last resort a power of compulsion, but the Basic Law is so drafted as to make the path easier for an obstinate Land than for a resolute Federal Government.

Some concession is made to the idea of strong central government in the field of national security. The Federal Government may add frontier protection and co-ordination of police activity to safeguard the constitution, to the list of functions which it directly administers. Where there is imminent damage to the 'free basic democratic order' a Land may call in the police of other Lands, or the Federation may place any Land police forces under Federal orders. This is a reminder that Germany has a frontier with the Communist world, over which refugees, with perhaps some spies among them, continue to pour: and that she has to reckon with attempts at neo-Nazi or Communist subversion.

The Legislature

The two Houses, Bundestag and Bundesrat, have already been mentioned. For the former, the Basic Law prescribes universal free equal direct and secret elections in which the qualifying age for voters shall be twenty-one and for candidates twenty-five. The detailed application of this rule is to be determined by federal law, and the plan now in operation is as follows: the country is divided into some 240 constituencies, approximately equal in population, each returning one member; the candidate who gets most votes, even without a clear majority, is elected. Besides voting for a candidate ('personal vote'), the elector may also, on a separate paper, give a vote to any one of the parties competing in the election.[1] In addition to the 240 members elected by personal votes there are 240 more seats in the Bundestag filled by persons nominated by the political parties, each party being given that number which will make its proportion of the whole 480 seats approximately the same as the proportion of the total vote which it has, as a party, secured. The details of the scheme are such as to give a moderate advantage to large or medium-sized parties at the expense of small groups. For example, in the election of 1953 the Christian Democrats secured 45 per cent of all votes cast and won 172 out of the 241 personal seats. They were then awarded

[1] He may, if he wishes, give his personal vote to a candidate of one party and his party vote to a different party; but this is not common.

71 out of the 246 additional seats, so that in the end they held 243 out of 487 seats. If the election had been conducted on a 'straight' system, with no element of Proportional Representation, this party would have commanded 70 per cent of the Bundestag; on a strict PR system, 45 per cent; on the mixed system actually used, 50 per cent. This plan, like all plans involving PR, gives a good deal of influence to party organizations, to whom, rather than to any personal contact with the electorate, half the members of the Bundestag owe their seats. As a safeguard against this, the law requires that each party must frame a democratic method of choosing the persons who are to fill its party seats, and that all Bundestag members must be subject only to their conscience and not to party instructions. This has not prevented the growth of vigorous party discipline in the Bundestag, and in practice a two-party system operates.

Once elected, the Bundestag sits for four years unless dissolved in the circumstances described above. It appoints its own President and arranges its own order of business and committee system. The Basic Law requires it to elect a Standing Committee which can conduct investigations like those of American Congressional Committees. When a general election is being held, this Standing Committee operates as an interim Parliament; it cannot legislate but can exercise the right to require the attendance of Ministers and subject the Government to criticism. We may say, then, that the Bundestag, unlike the British Parliament, is never completely dissolved; once again, the Legislature is given rather more authority, in comparison with the Executive, than in Britain. The four-year term is usually divided into annual sessions, with such breaks in them as the Bundestag decides. When it is not sitting it may be recalled by its President at a date earlier than that which it has fixed; and he must so recall it if the Federal President, the Chancellor, or one-third of its members so require. In Britain a special recall of this kind is at the discretion of the Prime Minister. The Basic Law guarantees to members of the Bundestag adequate remuneration and free travel; it also requires that any candidate at a Bundestag election must be granted by his employer the leave necessary to conduct his campaign.

The Bundesrat is more conveniently described in terms of votes than of persons. Each Land has at least three votes: those with more than 2,000,000 inhabitants, four; with more than 6,000,000, five. At present the largest Land has 15 million, the smallest 1½ million, inhabitants, so this arrangement decidedly protects the interests of the smaller Lands. Each Land sends to the Bundesrat members of its

Government, one for each vote which it enjoys, choosing and changing them as it sees fit. When a vote is taken in the Bundesrat, each Land votes as a block: this House is, indeed, a Council of States rather than an elected legislature. The Bundesrat elects its President annually; it is for him to call meetings of the Bundesrat, either as he thinks fit or when the Federal Government or the representatives of two or more Lands require him to do so. If the Federal President dies or is incapacitated during his term of office, the President of the Bundesrat takes over his duties.

Bills may be introduced in the Bundestag by private members, or by the Government, or by the Bundesrat. Government Bills must first be submitted to the Bundesrat for that body to express its opinion on them; and Bundesrat Bills have to be put before the Bundestag by the Government, with a statement of its opinion. Government Bills form the greater part of the business, but legislation on the initiative of private members is rather more frequent than in Britain. To pass the Bundestag, a Bill requires a majority of those members present and voting. Bills on certain matters which have been, or will be mentioned (e.g. amendment of the Basic Law or extension of the administrative powers of the Federal Government) must also obtain a majority in the Bundesrat. As to other Bills, if the Bundesrat is doubtful or hostile, it may, within two weeks of their passing by the Bundestag, require the convening of a joint committee of both Houses to consider the Bill. If the committee propose amendments, the Bundestag must decide whether to drop the Bill, or re-adopt it with or without the amendments. If the Bill is re-adopted, the Bundesrat has a week within which it may if it wishes, veto the Bill. If no amendments are proposed the Bundesrat may still impose its veto, within one week of the time when the Committee began to sit; the committee cannot, therefore, be used as a device to delay decision. A Bundesrat veto may be over ridden by the vote of a majority of all members (not merely of those present and voting) of the Bundestag; but to override a veto supported by two-thirds of the votes of the Bundesrat, a Bundestag vote comprising two-thirds of those present and voting, and a majority of all members, is required. It will be seen that the Bundestag cannot prevail against a determined majority in the other House, and has only a slight power of delay. The Federal President has no power of veto, and must duly record the passage into law of all Bills which have gone through the required procedure.

The Basic Law permits delegated legislation: that is to say, federal laws may permit Federal or Land Ministers to make orders having the force of law, provided that the scope and purpose of this

authority is clearly defined in the law. Further power is given to the Executive by Article 81, concerning 'legislative emergency'. It has been noticed that if the Chancellor fails to get a vote of confidence in the Bundestag, he may advise its dissolution. Alternatively, he may request the Federal President to declare a state of legislative emergency; and during the following six months any Bill which the Government declare to be urgent, which the Bundesrat approve and which does not alter or infringe the Basic Law shall become law whether the Bundestag approve or not. A Chancellor may only use this expedient once during his term of office; and this, together with the requirement of the Bundesrat's approval, is a check on what is, even so, a formidable grant of power to the Executive. The idea behind this device—which has not so far been used—is that circumstances may arise in which the judgment of those who carry the responsibility of Government is to be preferred to that of private members. In view of the uncertainty, in 1949, of Germany's future it is not surprising that some such provisions were made; but they are more carefully drafted than the emergency arrangements of the Weimar Republic.

As is required by the federal nature of the State, there is a distribution of legislative power between Federation and Lands. The Federation alone has the power over foreign affairs,[1] defence, citizenship, migration, currency, weights and measures, copyright law, customs, communications, federal employees, federal rail and air traffic, and co-ordination of police activity. Over a wide field both Federation and Lands may legislate, but the former only if it is necessary to secure uniformity or if the matter cannot be effectively regulated by Land legislation. This field includes the constitution and procedure of law courts, rights of citizenship in the Lands, laws affecting land, industry and commerce, public ownership, laws affecting labour, social insurance, and—a wide phrase—'public welfare'; also non-federal railways, road traffic, shipping and the control of pests and infectious diseases. Where Federal and Land laws on these matters conflict, the former are to prevail. The distribution is such that, as time goes by, Federal legislation is likely to predominate; but it must be remembered how large a share in the execution of Federal laws is entrusted to the Lands.

A Section of the Basic Law dealing with finance affects both the Federal/Land distribution of power and the relation between

[1] A Land may, with the approval of the Federal Government, make treaties with foreign states about matters within the Land sphere of legislation—e.g. it may make an agreement with the Vatican about religious education.

Executive and Legislature. The supremacy of the Legislature is guaranteed, as in Britain, by the fact that the power to levy taxes is conferred annually by a law based on a Budget statement presented by the Government. This statement must contain both estimates of the coming year's expenditure and revenue and an assessment of the Government's capital assets and liabilities. An audit office, enjoying the independence of a judicial body, scrutinizes Government accounts and reports on them to the Legislature. Proposals, in either House, to increase expenditure beyond that described in the Budget, must have Government approval. Emergency expenditure, outside the Budget, may be permitted by the Minister of Finance in case of absolute necessity, and his action would be subject to subsequent examination by the Legislature. The distribution of financial power between Federation and Lands may be described as follows: the Federation alone may legislate about customs duties and taxes on monopolies, and receives the whole revenue from these taxes. All other forms of taxation (with a few small exceptions, reserved to the Lands) can be the subject of Federal or Land legislation; but the revenue from income tax and other direct taxes and from the beer tax,[1] goes to the Lands; that from indirect taxation (except the beer tax) goes to the Federation. However, the Federation may claim part of the tax-revenue which, under this plan, would go to the Lands, and use it to make grants to the Lands for education and welfare, or to assist those Lands whose own revenues are comparatively small. As a general rule, Federation and Lands respectively administer and collect those taxes the revenue from which goes to them. The exact working of the whole complicated scheme is regulated by federal laws requiring the approval of the Bundesrat. At first sight the scheme appears to give great financial independence to the Lands: but the power of the Federation to claim part of the Land taxes, and to assist the poorer Lands, is a factor making for a uniform system and an increase of Federal power. The economic difficulties confronting Germany made it essential to give financial strength to the central government; but the task had to be done in a manner which showed respect to the traditional feelings of the Lands—for this question of apportionment of taxes has a long history, going back to Bismarck's Germany.

Before leaving the Legislature we must notice that it has power to amend the Basic Law without any of the usual federal devices of popular referenda or consent of the legislatures of the constituent parts of the Federation. Laws for this purpose must state clearly and

[1] An important part of the revenue of some Lands, notably Bavaria.

expressly what alterations they are making in the text of the Basic Law, and they must be approved by at least two-thirds of all members of the Bundestag and all votes in the Bundesrat. Amendment has already been necessary, to ensure the legality of the German Armed Forces. We have already noticed that some parts of the Basic Laws cannot be amended at all.

The Judicature

It has already been necessary to make frequent reference to the Federal Constitutional Court. The judges of this Court are elected, half by the Bundestag and half by the Bundesrat; they may not belong to any Federal or Land Legislature or Executive. The Court decides all disputes in which the point at issue is the meaning and effect of the Basic Law: it will be particularly concerned with disputes between the Federation and the Lands, and between one Land and another. The complex arrangements for the administration of Federal Laws by Land Governments appear more workable when we realize that, in time, a series of decisions by this Court will create an accepted pattern of working together. Further, on the request of the Federal Government, any Land Government, or one-third of the members of the Bundestag, the Court will decide the constitutional validity of any Federal or Land Law, even if no concrete case under such a law has yet come before the courts. If any court, when trying a case, has doubts as to the validity of any law bearing on that case, it must halt its decision until it has obtained the Constitutional Court's judgment.

For cases not involving the Basic Law, there is a group of higher Federal Courts, each with its own function—labour questions, social legislation, finance, administration, and general. The judges are appointed by the Federal Minister for the particular sphere of each court, acting with a committee composed of the corresponding Land Ministers and an equal number of Bundestag members. To ensure that justice is administered on uniform principles in these various Courts, there is above them a Supreme Federal Court, whose judges are similarly chosen, the Land and Federal Ministers of Justice and members of the Bundestag acting together.

Independence of the Judicature, and security of office for judges are generally considered an essential part of liberty; and the memory of Hitler's days, when judges were merely creatures of the Executive, would make this principle clear to the Germans. Under the Weimar Republic, however, some judges had abused their irremovability to twist the law in a manner designed to encourage reactionaries and undermine the Republic. The Basic Law, therefore, does not make

judges so hard to remove as they are in Britain and America. Special higher federal courts are established which can, for reasons prescribed by law, retire, suspend or dismiss judges. Judges who in their private or public capacity have acted unconstitutionally may be retired or dismissed by the Constitutional Court on the application of a two-thirds majority of the Bundestag. In this way it is hoped to ensure that judges, while independent of the Executive, shall be subject to the law.

The Lands have their own courts and constitutions, but must make provisions for appointment and removal of judges similar to those obtaining in the Federation. Both Federal and Land legislatures may create inferior courts.

Throughout the whole judicial system, the following principles prevail: persons who are arrested must be brought before a judge, at the latest on the day following arrest; and thereafter may only be detained if the judge so orders; and a relative or friend must be informed at once. Accused persons have a right to proper legal hearing before a court. No one may be punished more than once for the same act. Acts which were not criminal at the time of commission cannot be made so, retrospectively, by legislation. The death penalty is abolished.

General

This constitution is the best instrument of government the Germans have so far produced. It proclaims the basic liberties and provides, through the courts, the means of safeguarding them: yet it recognizes the duty of a democracy to preserve itself from its enemies. It does not provoke separatist movements in the Lands by trying to impose on them too uniform a pattern: yet it does not so weaken the centre as to arouse in the Germans that desperate and frustrated desire for unity which has led them, in the past, on such disastrous courses. But a constitution is no more than an instrument; if it is good, it will smooth the path of a nation which desires to become a civilized and peaceful democracy; it cannot by itself create that desire. We have yet to see what aims the new Germany sets itself.

So far, political wishes in Germany have expressed themselves in two main parties, the Christian-Democrats and the Social-Democrats. The former, who enjoy a substantial majority in the Bundestag, are firm believers in private enterprise and their leader, Dr Adenauer, has more than once expressed his hostility to the Welfare State. After the war Germany had to re-create her shattered industries, meet the claims of reparations and occupation costs and find employment for

those who had been in the war machine and for the large number of refugees from the East. This could not be done without some degree of government control and some conciliation of the Trade Unions, which sprang to life again after the overthrow of Nazism. Control has been exercised chiefly over investment, to ensure the adequate development of the coal, steel, engineering and chemical industries; organized labour has been given the right to appoint members to the boards of management of large firms; social services have proceeded more slowly, though great attention has been paid to technical education. The economy remains largely in private ownership, and its general tendency is to favour profits rather than wages; unemployment is substantially higher than in Britain, and it is argued that a fair-sized pool of unemployment is necessary if German workers are ultimately to be impelled into the industries most essential to Germany's recovery.

We have here a policy more avowedly Capitalist than that of the British Conservatives; yet its rigour has not prevented it from being acceptable to the majority of Germans. The Social-Democratic Party, with one-third of the nation behind it, has about the strength of the British Labour Party in the 1930s; since then the Labour Party has increased its support among industrial workers and attracted many rural and middle-class votes, and the German SDP must do the same if it is ever to form a Government. Many factors have worked against it. If Government policy was harsh to some workers, it was harsh also to inefficient capitalism, and this promoted economic recovery. The Nazi tyranny had, for many Germans, so discredited government action as to make *laissez-faire* more acceptable. Many more felt that, at least until Germany was on her feet again, it was simpler and safer to let things work out than to attempt major political changes. Further, there was, as in many Continental countries, a traditional association of Socialists with anti-clerical, anti-Catholic and even anti-religious thought. This factor is not so prominent as formerly—there are many German Catholics who vote Social-Democrat—but it has some effect in detaching working-class support from the Social-Democrats; and the Trade Union movement, partly for this reason, does not commit itself to any party. The severance of East Germany, with its large body of working-class Protestants, further weakens the Social-Democrats; it is noticeable that they are the largest party in West Berlin. It follows that the Social-Democrats have been more anxious than the Christian-Democrats to see Germany reunited, and it might be thought that this would increase their popularity. So far, however, the Russians have not been willing

to concede German unity except on terms that would give special advantage to the East German Communists; and the Social-Democrats have therefore been open to the suspicion that they would be too eager to conciliate Russia and endanger Germany's links with America and the West. Finally, the readiness of the Germans to work hard and practise self-denial for the sake of recovery has produced a degree of economic progress to which Dr Adenauer's government can point with pride.

Under Christian-Democrat leadership, then, Germany has accepted the Capitalist order and the temporary loss of East Germany, and adopted a policy of *rapprochement* with the West, based on American financial help, a common defence policy in which German armed forces play a part, and some measure of ideological kinship with the trend of modified-Capitalist partially-Catholic thought which has played a large part in the politics of her neighbours. The Western Powers feel relief that Germany has adopted a democratic constitution and rejected Communist advances, but misgiving as they watch the gradual reappearance of powerful capitalist enterprise in the basic industries and the beginnings, however small, of a German Army. At present the energies of this populous, skilled and industrous nation are concentrated on making a success of West Germany: for the present, in their philosophy, the whole purpose of the State is recovery; preoccupied with this, she has not the will—nor indeed the means—to seek either the world dominion that tempted her in the past or even reunion with East Germany. When, as must happen, she emerges as a great industrial, and perhaps military power, we shall know more certainly whether she has finally renounced the doctrine that the purpose of the State is power. If, by that time, it has still proved impossible to reunite Germany in a manner which allows all her people to enjoy democratic rights, the demand for reunion, which now sleeps, may become acute in German politics. A powerful Germany with a justifiable grievance is a menacing prospect.

CHAPTER VIII

Switzerland

Origin and Nature of the Constitution

Geography and history, in defiance of race and language, created the Swiss nation. Rulers of the Holy Roman Empire, with possessions north and south of the Alps, found it prudent to respect the wishes of a people who occupied a region so vital for communications and so difficult to conquer. Four small communities, having thus gained their freedom, banded together to defend it and did so with such resolution that neighbouring folk were drawn in, and an alliance was created capable of resisting, though with difficulty, attacks from French, German, Austrian or Italian princes. In this mutual defence club there were senior and junior members; some groups treated each other as equals, others were in a state of vassalage; for the Swiss, at this stage, were more concerned with freedom from foreign interference than with ideas of political and social equality among themselves. These ideas, however, were not entirely absent; they were part of the heritage of Germanic tribal institutions and they were given fresh vigour when Napoleon overran the country and created the 'Helvetic Republic' on the French Revolutionary model. This Republic did not survive Napoleon's defeat, but the experience taught the Swiss that their state would be safer if they fashioned a more modern constitution, giving greater equality of rights both between individuals and between the different cantons composing the federation. Some of the more conservative cantons disliking these tendencies formed, in 1847, a *Sonderbund* (separate alliance) and tried to secede but were swiftly defeated by the Federal forces. In 1848 a new constitution was adopted; but thereafter, as Switzerland felt the impact of 19th-century industrial and commercial development, she began to demand a form of government which would give greater uniformity of legal systems throughout the cantons, and would arm the Federal government with sufficient power to develop

railways and other public works and to organize an efficient army in view of the growing military power of Germany. Changes of this sort would strengthen the Federation as against the cantons; and, as a counterpoise, it was proposed to give greater power to the people as a whole, as against elected bodies, whether Federal or cantonal. In 1874 a major revision of the constitution was made, embodying these principles; and it is under this constitution, with minor subsequent amendments, that Switzerland lives today.

This history has left its mark on the 'General Provisions' contained in the first section of the Constitution. We perceive here five main characteristics. *First*, Switzerland is a Federation resolved not to endanger its unity either by unfair treatment of any of the racial, linguistic or religious communities which make up its population, or by permitting a repetition of the *Sonderbund.* The Federation is made up of twenty-two cantons three of which are divided into half-cantons. A half-canton has the same rights of self-government as a full canton, but only half the voting power for Federal purposes. Each canton can frame its own constitution, provided it is republican, not repugnant to the Federal constitution and capable of being amended by direct majority vote of the citizens. The cantons enjoy all powers not expressly conferred on the Federation by the constitution; they may make agreements with each other, or even with foreign powers, on economic and cultural matters; but such agreements require Federal approval, and must not be political or military. Disputes between cantons must be submitted to the Federation, and should violent conflict break out either between cantons or within a canton the Federation must immediately be informed and has both the right and the duty to restore order. This provision seems to have little relevance to the united and law-abiding Switzerland of today: it is a reminder of the troubled times of the last century.

Since the Federation has only those powers expressly granted to it, it has been necessary to put into the constitution much social and economic matter which would usually be considered the concern of ordinary rather than constitutional law. Not only does the Federation acquire, like other federal governments, power over currency, banking, communications, transport and customs duties; it may, and does, legislate on labour questions, social insurance, forests, field sports and the manufacture and consumption of spirits. In this connection we may notice, as the *second* characteristic of the constitution, a concern for economic and social stability. Switzerland is a free-trade area; the cantons may not impose customs duties, and

citizens are free to pursue the trade or profession of their choice. The Federation, however, has the right and duty to take discriminatory action to protect classes (e.g. the rural population) who may be threatened by the working of free competition—and conversely, the power to act against private monopolies. Cantons, under Federal supervision, may impose standards of competence for persons wishing to follow learned professions or to keep hotels. Switzerland is far from being a self-supporting country and recognizes the importance of a well-conducted tourist trade as an 'invisible export'; and, with the same eye to the balance of payments, the Federation is empowered to supervise the production and storage of cereals. There is a further Federal power to engage in or subsidize public works and to acquire property, subject to fair compensation.

The *third* characteristic is a concern for the rights of individuals and small groups. Switzerland has grown by accretion—the families of a mountain-valley or the burgesses of a city coming together as a commune, communes forming a canton, cantons a Federation. A Swiss citizen is first of all a citizen of his commune, and this citizenship is either his by right of birth—or, if he is of foreign origin or comes from another commune, he may be allowed to purchase his way in. Citizenship gives him both the right to take part in the commune's government, and to use communal property such as pastures and forests.[1] In rural communes there is often no elected council; the whole male population meet periodically to take decisions and appoint officers, as 'open vestries' in 18th-century English parishes were supposed to do. Communes which are industrial towns are, of course, obliged to have elected councils.

A citizen of a commune is *ipso facto* a citizen of the canton in which that commune is situated and can vote at elections for cantonal authorities. There are still a few cantons where, as in rural communes, direct democracy prevails and the sovereign body is a vast assembly of all male citizens; but it is probable that in time these will have to follow the example of the rest and have an elected Council, or Cantonal Parliament, from which a smaller executive body is chosen.

We have here an ancient and deep-rooted concept of citizenship, on top of which the constitution has had to place the modern idea of Swiss citizenship. It has done this by enacting that all citizens of all cantons are Swiss citizens and can exercise the rights of Swiss citizens wherever they live. For example, if I am by birth a citizen of

[1] In a few communes there are two grades of citizen—those with voting rights only, and those with voting rights and rights over communal property.

a commune in the canton of Schwyz and go to live in Lugano I can take part in Federal elections there at once; but I cannot vote for the town council of Lugano or the council of the canton of Ticino, until I obtain a 'settlement' in the commune of Lugano. Here the constitution has so far invaded communal rights as to state that provided I possess the proper papers issued by my home commune, am of good character and not liable to become a charge on public funds, I am entitled to a 'settlement'. If, perhaps by bad behaviour, I later lose this settlement, and if I become a pauper, Lugano may send me back to my home commune; my citizenship there is something I can never lose, and carries with it the right to poor relief. For the vast majority of the Swiss people all this involves no more than the need to comply with a few formalities when they move about: but it indicates an attitude to citizenship very different from that of most modern states.

In further protection of citizen rights the constitution guarantees to all citizens the right to form associations, equality before the law, and freedom of the press—with the important exception that publication of matter likely to endanger Switzerland's neutrality in international affairs may be prohibited. Cantons are required not to discriminate in their laws against citizens of other cantons: and for legal and official purposes all citizens may use whichever of the four national languages is native to them. Since three-quarters of the people speak German, one-fifth French, and the rest Italian or Romance, this is evidence of a high regard for minority rights.

The *fourth* characteristic is a respect for national defence. The constitution gives the control of the armed forces to the Federation, though a considerable part of the Army administration is delegated to the cantons. There is a small body of regular troops, but the bulk of the army is provided by compulsory service, which is required of all male Swiss for a period, first of some months, and later of weeks over several years. The medically unfit and the very few who are exempt on other grounds pay a special tax, half of which goes to the cantons and half to the Federation: there is no provision for conscientious objectors. The Swiss citizen, during his years of military service, has in his permanent possession, a rifle and ammunition; no other government in the world expresses in so practical a manner its complete confidence in the loyalty and law-abidingness of its citizens. If one of Switzerland's great neighbours, free from other distractions, were to devote its whole energy to the conquest of the country, no doubt in time numbers and resources would prevail even against Swiss valour and geography. The Swiss, however, in the light

of experience, judge that by being prepared they can make conquest so difficult as not to be worth attempting, and so protracted that other interested powers would move against the aggressor before his task was complete. Yet Swiss security does not depend on defence alone. When wars have occurred, the neutral Swiss Government has rendered humane services, such as ensuring proper treatment, in accordance with international conventions, for prisoners of war of either side; and the hospitality of Switzerland to the Red Cross and other international organizations is well known. Consequently, the whole world has an interest in Swiss security and neutrality, and the country remains ceaselessly ready for war and actively zealous for peace.

The *fifth* characteristic is a certain anti-clerical and even anti-Catholic flavour. Switzerland realizes that her unity depends on toleration, but she remembers the harshness of Catholic majorities in some cantons before the 1848 constitution, and the support given by Catholic clergy to the *Sonderbund*. The constitution, therefore, does not subject the 40 per cent Catholic minority to anything that could properly be called persecution, but at several points it refuses to accept Catholic claims and takes precautions against the growth of clerical power. The Jesuit Order is forbidden to organize in Switzerland, and bishoprics may not be established without federal consent. The only form of marriage recognized by law is a civil ceremony; but, of course, the parties can also have a religious ceremony if they wish. The main purpose and effect of the religious provisions of the Constitution is to protect the civil rights of Protestants and agnostics in predominantly Catholic cantons.

It is a special feature of the Swiss constitution that these General Provisions form the largest part of it. They are more than statements of principle, since they set out, often in great detail, the practical means by which the territory and economy of the State are to be protected, and the civil rights of the individual guaranteed. The Constitution then proceeds, with comparative brevity, to describe the organs of government through which these duties are to be performed.

The Legislature

This is called the Federal Assembly and contains two Houses, the National Council and the Council of States. The National Council is elected on the basis of one member for every 24,000 of population, provided that every canton or half-canton, however small, is to have at least one member. This gives a membership of approximately 200.

There is a proportional system of voting, each canton or half-canton forming one electoral district, so that, in large cantons, the voter has to select some thirty candidates out of a hundred or more who put up. He does this either by voting for the list put forward by the party which he favours, or by making his own selection from the various party lists. All male citizens over twenty may vote and all of these, except the clergy, are entitled to stand. National Councillors are elected for a fixed term of four years.

The Council of States contains forty-four members, two from each canton and one from each half-canton. Each canton decides for itself the qualifications for electors and candidates and the term of office for which a Councillor shall be elected. Most of them make rules similar to those for National Council elections, but this is not universal. Consequently, except in one special set of circumstances described later, there is no 'general election' for the Council of States, but a series of cantonal elections at various times.

The two Houses sit together to elect a Federal Council and a Federal Tribunal—that is to say, the Executive and the Judicature of the Swiss State—to exercise the right of pardoning criminals, and in time of emergency to elect a General-in-Chief. For ordinary legislative purposes the two Houses sit separately and have equal powers; but a conflict between them can be resolved by a joint sitting. At all joint sittings the President of the National Council takes the chair; decisions are taken by a simple majority of those voting, so the National Councillors, being more numerous, have the predominant power.

The Executive

The chief executive authority is the Federal Council, elected by the Federal Assembly for a term of four years—i.e. co-terminously with the National Council. There are seven members, each of whom is in charge of one of the following departments: Foreign Affairs, Home Affairs, Justice and Police, Defence, Finance, Public Economy (i.e. industry, agriculture and social insurance) and Posts and Railways. Anyone who is eligible for membership of the National Council may be chosen, but Federal Councillors may not be members of either House of the Federal Assembly: nor may they undertake any other work besides their governmental duties. Each of the seven must come from a different canton, and the practice is to elect a Council in which the main political parties, the Catholic and Protestant communities and the main language groups in the population will be represented. Re-election is frequent, and it may well happen that a

Councillor retains his seat, and continues to look after the same department, from his first election to the time of his death or retirement. One of the Federal Councillors is elected by a joint sitting of the Federal Assembly to be President of the Confederation. He is the Head of the State, and takes the chair at meetings of the Federal Council. The Presidency is a yearly office, and no one may hold it for two consecutive years.

The Council is assisted by a Chancellor, elected at a joint sitting of the two Houses; the organization of the Civil Service is under his care.

The Process of Legislation and Government

Although the Federal Council and Federal Assembly are separate bodies, and no one may be a member of both, there is no real 'separation of powers' in Switzerland. The Federal Council is a permanent coalition government; in the Assembly the effect of the proportional system of election is that no party enjoys a clear majority and collaboration between the parties is inevitable. Elections do make, from time to time, alterations in the relative strengths of parties, and so produce some changes of policy on specific issues. Unlike British elections, however, they do not transfer power to a different set of people with a different political philosophy. In this atmosphere, Executive and Legislature work closely together. Federal Councillors frequently attend and speak in either House of the Assembly, or its committees: they do this either of their own wish or at the request of the legislators.

A proposal to make a new law may be made in either House on the suggestion of any of its members; or it may be taken up in response to a written request from any Canton or a suggestion from the Federal Council. In any case the Federal Council is usually asked to provide the Assembly with a report on the proposal. The two Houses reach agreement as to which of them is to be first to deal with any proposal, and the proposal is referred to a Committee of that House. This Committee, having examined the matter, often in consultation with Federal Councillors, civil servants and such other witnesses as it likes to call, produces a draft law. The House debates this, first in general and then clause by clause; if, at the end of this process, the draft is approved, it goes to the other House for similar treatment.

Approval by both Houses, however, does not necessarily end the process; for the Constitution provides that substantial changes in the law may be submitted to a vote of all citizens. The circumstances in

which this device of referendum must be used are not fully defined. The Constitution makes a nominal distinction between Laws and Decrees. Both are passed by the Assembly in the same manner, and both have equally the force of law; it is open to the Assembly to make any particular legislative change either as a Law or a Decree. Laws are liable to the referendum; Decrees are only liable if they affect the whole population and not, for example, concerned with a particular industry or interest. The Assembly can decide for itself whether a Decree is of universal application or not; and even a universal Decree can be temporarily excluded from the referendum if a majority of the total membership (not merely of those voting) in both Houses decides that it is a matter of urgency.

When a Law or a Decree of universal application has passed both Houses, the Swiss people have ninety days in which to make up their minds whether to use the referendum. If, during that time, 30,000 adult male citizens, or eight cantons, demand a referendum, it will be held, and a simple majority of the popular vote will decide the issue. A universal Decree declared urgent by the Assembly comes into force at once; but if the 30,000 citizens or eight cantons demand a referendum, then either the referendum must be held or the Decree lapses after twelve months and may not be re-enacted. Treaties with foreign powers require the approval of the Assembly in the same manner as Laws; if they are to last more than fifteen years, or are of unspecified duration they are likewise liable to referendum on demand.

It appears, then, that for all major changes of the ordinary law, the Swiss people may have a referendum if they wish. For amendments to the Constitution, a referendum is always necessary. Such amendments may be first passed by the Assembly, in the same manner as Laws, and then submitted to referendum. Alternatively, 50,000 citizens entitled to vote may express, in general terms, their desire for amendment in a particular direction. If the Assembly agrees, they draft the precise terms of the amendment and submit it to referendum: if they disagree, a referendum on the general idea is held and if a majority of the citizens who vote are in favour, the Assembly must proceed to draft and submit the result to further referendum. Alternatively again, the 50,000 citizens may put forward a precise draft amendment themselves: if the Assembly agree a referendum is held forthwith: if they disagree, they put up a counter-proposal and a referendum is held at which the people decide, either for one draft or the other or for no change at all. In these referenda for amending the Constitution, the proposal will not be finally

approved unless it has a majority of votes both in the country as a whole and in a majority of the cantons.

There is further provision for total revision of the Constitution, but it has not been used since 1874. The Assembly may carry through such a revision by passing a Law for that purpose and obtaining approval, at a referendum, from a majority of the popular vote, both in the whole country and in a majority of the cantons. Alternatively, one House of the Assembly, or 50,000 citizens, can demand a referendum or the desirability of total revision. If there is a simple majority of the popular vote in the whole country in favour, a general election of both Houses is held, and the new Assembly proceeds to draft a Law for total revision, which must be approved by a majority vote both of the whole people and on a majority of the cantons.

In addition to legislation, the Assembly has each year the task of discussing the annual report of the Federal Council. This amounts to a general debate on national policy, and enables the Council to assess the temper of the Assembly and frame its own actions accordingly. The Council must also make each year its Budget proposals for public expenditure and taxation. Each House has its Finance Committee, and delegates from these two committees examine the Budget, consulting with Council and with Civil Servants, and report to the Houses. The Budget is then debated and approved, with or without amendments, in the same way as a law or decree; but financial proposals are never liable to referendum. The Finance Committees have also the continuing duty, comparable to that of the British Public Accounts Committee, of ensuring that money is only spent for the purposes approved by the Assembly.

We have noticed that the Assembly usually begins the process of legislation by asking for a report from the Federal Council. Members of either House may likewise ask the Council for reports on administrative matters not requiring legislation; and, in the National Council, some use is made of the right to put oral or written questions to Federal Councillors.

The Constitution contains no explicit provisions for conferring special powers on the Executive in time of emergency. The Federal Council has, however, the duty of preserving the independence and neutrality of the country and of controlling the armed forces; and, when necessary, it has stretched its powers widely to perform this duty. At the beginning of the first and second world wars the Assembly passed an urgent Decree conferring almost unlimited military and economic powers on the Council, subject to periodic report to the Assembly. The normal processes of Swiss government

involve, as has been shown, a continuing partnership, of Legislature, Executive, and citizens. The resulting mutual trust is so great that in time of emergency a wide grant of power can be made without the safeguards which peoples more suspicious of their governments consider necessary.

The Judicature

The chief judicial institution is the Federal Tribunal, consisting of some thirty judges, elected for a term of six years by a joint session of the two Houses of the Assembly. In theory, anyone qualified to be a member of the National Council may be elected; in practice experienced lawyers are chosen, and re-elected for successive terms. Care is taken that the various language and religious communities shall be represented on the panel of judges. Judges may not be members of the Assembly or the Federal Council.

On rare occasions, to try charges of treason or other serious crimes against the State, the Tribunal sits with a jury. Usually, however, a jury is not employed and the Tribunal divides itself into several courts to deal with the various types of business coming before it. Its Criminal Court tries ordinary offences against Federal laws and its Court of Cassation hears appeals from persons who have been convicted by cantonal courts for offences against cantonal laws, and who claim that their conviction is contrary to federal law. Although cantons can and do legislate on all matters not expressly reserved to the Federation, the Swiss have agreed to the passing of a federal law which establishes a uniform code of criminal and civil law throughout the country; and cantonal laws which conflict with this code are of no effect.

Another section of the Tribunal, called the Administrative Court, deals with offences or improprieties committed by public officials, with disputes arising between the State and religious bodies, and some other matters defined by law. The Tribunal also handles civil cases to which a canton, or the Federation itself, is a party, or in which the sum of money involved is substantial, and both parties have agreed to refer the case to the Federal Tribunal. Finally, the Tribunal appoints seven of its members as an Extraordinary Court of Cassation, which hears appeals (except in those cases which have been tried by jury) from all other sections of the Tribunal.

In the course of its work the Tribunal has to interpret both the law and the Constitution; but, unlike the Supreme Court of the United States, it is not the final authority on constitutional questions. Should disputes arise as to the relative powers, under the constitu-

tion, of the Legislature, Executive, and Judicature, they can be finally resolved by decision of a joint sitting of both Houses of the Assembly. This would seem to give the Legislature more power than is usual in federal countries with written constitutions. The Swiss Legislature, however, has always to proceed with a large measure of agreement among the main parties and groups in the State, and is further restricted by the referendum. It is not likely to make laws which greatly offend any considerable section of the people; consequently, the question whether its laws are constitutional hardly arises in practice.

General

Swiss institutions give the appearance of being both complicated and casual. Contrast, for example, the elaborate arrangements for the use of the referendum with the uncertainty as to the circumstances in which it must be used. Contrast also the grant of residual powers to the cantons with the centralization achieved in the legal system and in the control of vital parts of the economy. The complexity is necessary to provide for the government of a nation divided in race and language. The apparent casualness is possible because of the fundamental unity of the Swiss people, and the trust between government and people which this engenders.

Underlying everything is a pattern of political belief older than the industrial revolution. The central figure of this pattern is the hardy mountaineer, getting his living on his own land, ruling his family, trusting his neighbours whom he knows and mistrusting anyone—priest or prince or foreign overlord—who might interfere with his independence or his patriarchal authority. To such a man, the government of the State is merely an extension of the simple collective agreements he reaches with his neighbours for the care of woodlands or the protection of livestock. He knows by experience that such agreements are not workable if they are hastily imposed by a majority. They must result from careful discussion and be so framed as to win the largest possible measure of consent. His ancestors lived with their weapons ready to hand, to defend their flocks against wolves and their liberties against Emperors and Archdukes; directly descended from this is his own duty to protect his country's independence in the troubled 20th century. Over the years, the rise of industry and the tourist traffic have altered the occupations of the Swiss without altering their character. Individual enterprise operating within a framework of rules collectively made and enforced is as good a recipe for an hotel industry as for village agriculture. Whatever

his occupation, the Swiss citizen remains a disciplined individualist, slow to make laws but resolved to respect them when made.

This attitude of mind, reflected in the elaborate procedure necessary for the making of laws, produces a united, stable, but slow-moving society. In politics, three parties of about equal size—Liberals, Catholic-Conservatives and Socialists—and a somewhat smaller Farmers' Party—work together in the Legislature and Executive to produce a policy which is a series of compromises. Anyone who has observed the frightful effects of violent politics in the world outside Switzerland may be inclined to ask why mankind as a whole cannot settle its affairs in Swiss fashion. Yet, for every advantage of Swiss politics, a price has to be paid. The high degree of direct democracy, in which citizens really govern themselves, leaving as little power as possible to elected persons, is possible only for a small nation. If all mankind had lived in such small groups, neither trade nor the large-scale application of science to practical problems could have reached its present level. The Swiss political machine has never had to handle colonial problems; and if Switzerland has committed none of the crimes of Imperialism she has, equally, taken no part in the discovery of distant lands and the extension to them of law, education and scientific discovery. If no nation had ever undertaken this task, neither the Swiss nor anyone else would enjoy their present standard of life. The toleration which permits government by perpetual compromise can become a toleration of abuses. Hence, perhaps, it is that women remain unenfranchised, that the treatment of the poorest people is often harsh and that social services are less developed than in other countries of comparable wealth per head. Occasionally, the neglect of social problems has resulted in outbursts of class conflict which warn us not to overestimate the placidity of Swiss affairs. The unique characteristic of Switzerland is that she has adopted a form of politics and a way of life which sets a limit to the capacities of the human spirit, both for good and evil: it is a limit which mankind as a whole is not prepared to accept.

CHAPTER IX

Federalism

SEVEN of the countries so far described have a federal form of government. In each, before the present federal State was established, there existed separate units possessing some or all of the characteristics of a sovereign State, and evoking loyalty and affection from their citizens. Yet these units felt a common interest strong enough to impel them towards a fuller and more lasting union than can be achieved by a treaty or alliance between sovereign States. To understand why a country has adopted a federal form of government we have therefore to examine the factors which give each unit its distinct character and its desire to preserve that character, and the factors which create the common interest. The former set of factors are those which create any national group—history, geography, race or language or any combination of these. The thirteen colonies which preceded the United States had been founded at different times for different reasons, by people with widely differing political and religious views. Differences in climate, in configuration, and in distance from the sea had given to each colony its distinct economic interests. History and geography rather than anything else, prevented their smooth coalescence into a unitary State; there were some differences of race and language, but the great majority of the people were English by descent and speech. In Australia, almost the whole people were of one stock and language, nor did the forms of government differ greatly between one colony and another. Yet each, by virtue of its geographical position, had its own economic interests and they were separated from each other by vast unpopulated stretches of land. Similar conditions prevailed in Canada, with the added complication of the French-speaking Catholics of Quebec. In Switzerland, and still more in India, the differences of religion, race and language are so marked that we are called on to explain rather why these communities came together at all than why they did so in a federal fashion.

The factors which bring separate units together in a federal bond appear, from the record of history, to be defence and economics. The people of the United States had need of common action to win their war of independence and prevent reconquest. It may be that if the imperial power of Spain had been harder to overthrow, or more capable of attempting reconquest, the Spanish-speaking nations of South America would today be a federal union. The North Americans realized also the importance of freedom of trade and movement, of assured communications and a universal currency, if they were to develop their continent. A similar need confronted the peoples of Canada and Australia; and the spread of German imperial ambitions into the Pacific warned the Australian colonies to look to their defences. Defence at first, and economic interest subsequently, were the cement of the Swiss Confederation. Half-way through the 19th century the German people realized that if they remained a loose collection of principalities they would always be outstripped by Britain and France in industrial development and imperial acquisition. The realization was sharpened by the knowledge that, once united, the Germans would be the largest, and could be the richest and most powerful State in western or central Europe. India is a special case, since she had been fashioned into a nation and given a modern and unitary, if decentralized, form of government by a foreign conqueror. The economic advantages of being one nation were too real and apparent to be sacrificed; the long period of agitation for independence had created a national sentiment. It was imperative, especially after the separation of Pakistan, for the rest of India to prove that she could hold together once British rule was withdrawn. Although reconquest by the British was not to be feared, aggression from elsewhere, or internal anarchy, were possible dangers. These factors prevailed over the many differences between the peoples of India and produced a form of government which stands only just on the federal side of the border between Federations and Unitary States.

Defence, and the desire to make full use of economic opportunities are factors which not only create federations but also determine their character and ensure their permanence. Common defence cannot be organized unless all major decisions about armed forces, and about foreign policy, are entrusted to the Federal Government. Economic advantages cannot be ensured unless a single authority legislates about currency and banking and the whole country becomes—save perhaps for minor restrictions—an area throughout which labour can migrate and goods move freely. As economic life

becomes more complicated, the list of subjects—bankruptcy, patents, monopolies, insurance—which it is convenient to entrust to the Federal Government, steadily increases. As this process continues, each unit becomes more dependent on the whole for its defence and prosperity; no one unit or group of units can withdraw without imperilling the safety and standard of life of the rest. The essential qualities of a Sovereign State have been conferred on the Federation; whatever the units may originally have intended, and however much they cling to their special rights, they are no longer sovereign. It is this practical consideration which expresses itself in the opening words of the United States constitution 'We, the people of the United States (not, be it noticed, the separate peoples of thirteen separate States) . . . to secure the blessings of liberty to ourselves *and our posterity* do ordain and establish this Constitution'. The same consideration underlay Lincoln's insistence that the Constitution did not permit secession. Attempts have been made to distinguish between 'Confederations', which admit the right of secession, and 'Federations' which do not. But if the term 'Confederation' be given this meaning, where are Confederations to be found? Alliances, from which the parties can withdraw at will, are common enough; but they do not create, as any structure which claims to be federal or confederal must do, a common citizenship and allegiance. The record of history is that this citizenship and allegiance, once created, cannot be destroyed or renounced. The Swiss still use the term 'Confederation'; but in the *Sonderbund* war, they disposed of the claim to secession.

A Federation, then, is a permanent union of communities so distinct that they might have been sovereign states, so linked by common interest that they have surrendered absolute sovereignty, but so conscious of their distinctness that they have made the surrender in a form which protects those separate rights, short of sovereignty itself, which they most cherish. These rights and these forms of protection may differ in detail from one Federation to another; but the making of federations is a difficult feat of political engineering only successful if certain basic principles are observed. These principles impose on federations certain common features which we have now to examine.

First, a Federation requires a written constitution. Since its component parts are, at the time they federate, politically conscious units, they will require to know where they stand and to have some universally accepted statement of the rights of federation and units, to which they can appeal in case of later dispute. Moreover, we have

already noticed that the term 'written constitution' does not only refer to the writing as distinct from oral tradition; it means a constitution separate from the rest of the law and capable of alteration only by a special procedure. Federating units will naturally require this safeguard, without which a bare majority in the whole population could sweep away state rights and impose a unitary form of government. Written, separate and detailed constitutions, making provision for a distribution of powers between the federation and the units, have to be made by sophisticated people, equipped with historical knowledge, contemporary experience and some foresight into what problems the future brings. The record of the past contains many alliances, leagues, empires, oscillating between disruption and autocratic centralism; but federalism, as a stable form of government over a large area, could not emerge till comparatively late in man's political development. When England and Scotland came together, there was little in the experience of either country to suggest a federal solution; were the link to be forged today it might well be federal.

Second, federations require a Supreme Court to interpret the Constitution, and *third* they must provide methods of altering the Constitution. These are direct results of having a written constitution, and will appear in both unitary and federal countries, wherever written constitutions are found. In federations, however, the constitution is not only the guarantee of rights to the whole body of citizens but also the protector of the claims of separate groups; it is likely, therefore, to be more earnestly studied and more frequently invoked. Also, since it has been drafted to conciliate groups with different or even conflicting interests, it may well contain phrases of doubtful meaning which were found acceptable because each group placed its own interpretation on them. Consequently, interpreting and altering the constitution plays an exceptionally large part in the politics of federations.

Courts are not supposed to make or alter law, but simply to declare it. On this view the Supreme Court is simply the immediate arbiter, declaring what the constitution is on a particular point at a given time. If the people, having learnt from the court what the constitution is, do not like it, they are the final arbiters; by acting in the prescribed manner they can change the constitution from what it is to what they think it should be. In practice these two functions are not so precisely distinguished, and the comparative importance of the Supreme Court, the Legislature, and the process of constitutional amendment varies greatly from one federal country to another.

In the USA the constitution is brief, the problems arising since it

was drafted have been many and complex, and the process of amendment is cumbrous. Frequently, therefore, the Court has had to apply to present problems words written 100 or 200 years earlier. Ought white and negro children to go to the same schools? May a State impose a tax on newspapers? Does freedom of speech include the right to advocate Communism? Such are the questions the Court has in fact answered when, in form, it was deciding a lawsuit between two private persons, or between a private person and a State. Political and social decisions are presented in a judicial form: so it has been said that 'Federation substitutes litigation for legislation'.

Yet this phrase is an exaggeration. There is a limit to the extent to which Courts can stretch old words to meet new problems, and when this limit is reached, further changes have to be effected by amending the Constitution. The US Supreme Court could not, by itself, have enfranchised negroes or women, or established or abolished the prohibition of intoxicating liquors. In federal countries outside the USA the phrase is even less true. Their constitutions are more detailed and more recently drafted, so that there is less room for judicial argument about their meaning; they can also be more easily amended. In Switzerland, the influence of the Court is at a minimum because the practice of consulting the whole people by referendum, both on constitutional and ordinary legislation, is so well-established. Where the final arbiter—the people—can pronounce speedily and easily, the immediate arbiter—the Court—becomes less important.

Fourth, Federations find a Second Chamber in the Legislature extremely useful, if not essential. The real purpose of Second Chambers is to make the passage of certain types of legislation and the effecting of certain types of social change more difficult than they otherwise would be. What types of legislation and change are thus delayed depends on the composition of the Second Chamber. In unitary states the general tendency is for Second Chambers to protect either the wealthier classes or the rural community, and it may fairly be argued that they are class and partisan institutions, only reconcilable with democracy if their powers are severely limited. In federal countries their purpose is to guard against changes which would reduce the rights of the units as against the federation. These units usually contain people of all classes, occupations and opinions so federal second chambers are not necessarily associated with any particular class or occupational interest; though, as we shall see, they may sometimes tend to be so.

Because of their connection with the rights of units, they are so

constructed as to give the smaller units a greater voice than size of population alone would justify. Sometimes, as in the USA and Switzerland, each unit has the same number of votes; sometimes, as in Canada and Germany, the number of votes varies with, but not in direct proportion to, the population of each unit. Usually, though not always, the less populous units are the less industrialized, so that there is some tendency for these chambers to favour the rural interest. Several federations prescribe a higher age-qualification for membership of their second chambers, and this may make them more conservatively minded. Canada is alone in prescribing a property qualification by law; but in practice second chambers usually contain more wealthy men than are found in the lower houses. In the USA this is particularly noticeable; a Senator represents a very large number of electors and the task of getting into—and staying in—the Senate is correspondingly expensive.

So federal second chambers can easily develop the same conservative and class tendencies as second chambers elsewhere. In recognition of this, and to preserve the claims of democracy, they are usually given subordinate powers. This may be done by limiting their control over money, or by giving them a power only of delay and not of permanent veto, or by arranging that disputes shall be settled in a joint sitting where they will be outnumbered. The US Senate, however, has equal powers in law and greater influence in fact. It may be that a federation so large and varied could not exist without conciliating its units by giving this special position to the Chamber which guards their rights. By contrast, the German *Bundesrat* has but slight powers over general legislation, and its special powers are restricted to the precise federal purpose of restraining the Federal Government from undue interference with the Lands.

Fifth, federal countries must decide how the power of making and enforcing laws is to be divided between the federation itself and the units. It is a straightforward enough task to set out in the constitution lists of topics which are to be, respectively, the subject of federal, unit, and concurrent legislation. We have seen that, in the nature of things, the federation must control defence, foreign affairs and a few essential economic matters. The units—if the status of a unit in a federation is to be worth having—must at least be able to deal with their own local government and education, and—subject perhaps to some federal control—their own police and law courts. In between is a wide range of subjects—the criminal law, marriage and divorce, labour questions, etc., which are sometimes given to the federation, sometimes to the units, and most frequently made subject to con-

current legislative powers. Canada alone confers the 'residual power' on the federation rather than the units, but a similar tendency is apparent in India, where the federal Legislature can increase its powers without much difficulty. The extent to which laws and habits differ from one part of a federation to another seems to depend less on the provisions of the constitution than on the traditional beliefs of the people; and units do not as a rule wish to differ as much as they legally could. If the legislators in an American or Australian State chose to make adultery a criminal offence or to declare murder a civil matter, settled by the payment of wergild to the family of the victim, it is doubtful whether they could be constitutionally prevented; but they do not do so because such action would be repugnant to ideas which they share with their fellow-citizens in other States. Again, labour laws may differ from one unit to another, but all will take some steps to prevent the exploitation of juveniles. Even in federations which make social insurance a unit matter, there will be few units which do not make some provision. In any country where labour and capital can move freely, and ideas can be exchanged, there will be increasing uniformity in the problems to be solved and even in the solutions propounded.

The enforcement, as distinct from the making of law, is a more complex problem. Both the federation and the units need to possess their own law courts, police and administrative officials. In the USA and in Australia federal laws are enforced by federal courts and police, and State laws by State courts and police; in India, State Courts deal with Federal and State law, but are subject to more supervision by the Federal Court than is found elsewhere; in Germany, as we have seen, there are elaborate arrangements for sharing or delegating law enforcement. In all federations, conflicts of police and judicial authority are liable to occur; they have to be resolved more by mutual goodwill than by constitutional devices. In Canada and Australia they have presented little difficulty; in the larger and less homogeneous United States they are a continuing problem.

In general federal government is more complex, more productive of difficulty and inconvenience and less capable of swift action than unitary government. Yet it would be absurd to say that unitary government is better or preferable, since history scarcely ever gives an opportunity for exercising a choice in this matter. When the USA, Australia, Switzerland and the rest were created, the facts, and the feelings of the people concerned, were such that they could come together either as federations or not at all. The alternative to a federal

US was not a unitary US but no US. The inconveniences of federalism are a price worth paying for creating a greater nation than could otherwise have existed. We can draw only the limited conclusion that no wise legislator would provide a country with a federal constitution unless that were an unavoidable condition of national existence.

We should notice also that federations have displayed a marked capacity for surmounting the inherent difficulties of federalism. Exceptional uses of Presidential power and enlargement of the central administrative machine in the USA; quiet evasions of the constitution in Switzerland; opportunities in the Indian constitution for progressive increase of Federal power; the Australian addition of an Inter-State Financial Agreement to the Constitution—all these are ways of promoting the greater centralization required by modern life without outraging feelings and traditions. The use of such devices, however, can only proceed in so far as there is a feeling of national, as distinct from unit loyalty. At the outset, a man may feel that he is first a citizen of the Grisons, or a Virginian, and only secondly a Swiss or an American; but unless he feels himself at least in some sense Swiss or American, the federation is unlikely to thrive. But let it be created, and set to work, and his great-grandchildren will reverse the order of loyalties. This consideration may throw some light on the prospects for Western European countries. They have begun to take common counsel over defence and economic matters, and to create what may well prove to be permanent organizations for these ends. Yet if, at this moment, they were to federate they would probably find that there was not enough common loyalty and mutual goodwill to permit the skilful manipulations of the constitution without which federation cannot work. The differences between European nations are wider than those between the component parts of any federation yet created. Ancient traditions, differences of language, memories of old conflicts cannot be removed by the mere drafting of a constitution. If the arrangements for common defence, a free trade area, a concerted foreign policy, the management of coal and steel, can be made to work in a manner which convinces more and more people of their merits, there may grow that loyalty and goodwill on which federation can be built.

CHAPTER X

France

THE French Revolution was the product of both the successes and the failures of the old monarchy. The establishment of one sovereignty and the maintenance of order over a large, fertile area and the persistence of an intellectual vigour dating back to the court of Charlemagne had produced such a growth of wealth that the phrase 'as rich as God is in France' was currently used to describe abundance. Out of this had sprung a lively middle class of merchants, industrialists and professional men who had made money and wanted to make more as the possibilities of world trade opened before them. The monarchy had prevented the nobles from disturbing the peace at the price of allowing them to become a parasitic class, treating their lands solely as sources of revenue, avoiding their share of taxation and enjoying legal and social privileges of such magnitude as to be a constant vexation and indignity to their fellow-citizens. The taxes necessary to support military expenditure and the extravagances of the court fell heavily on the middle class and the peasantry; the latter, over-taxed, rack-rented and subjected to personal tyranny were without incentive to care for the soil, so that its yield was far less than its natural fertility would have warranted. The frustrated ambition of the middle class and the misery of the peasants produced the explosion. The middle class, knowing more surely what changes they desired, took the lead and made the revolution a movement to sweep away every obstacle in the path of the productive and energetic. This meant not only the disappearance of the court and the aristocracy, and a great reduction in the property and privileges of the Church; it meant the abolition of every custom and institution for which a businesslike reason could not be found. The underlying philosophy, expressed in the Declaration of the Rights of Man, was that if only men were given an equal start under equal laws and allowed and encouraged to produce and trade, they

and the nation would prosper. Similar ideas were being expressed in the newly-founded United States, and in Britain, where Adam Smith's *Wealth of Nations* had appeared in 1776. The French leaders, being men who had had much opportunity to think about politics and none to practise them, pursued ideas rigidly. The old provincial boundaries, based on medieval history and often accompanied by internal obstructions to trade, were abolished. The new republic, one and indivisible, was provided with local government units based on natural geographical features. The same insistence on conformity to nature produced the metric system in place of the old multiplicity of systems of weights and measures; a new calendar proved to have less power of survival. In time, a modern legal code, with equal rights and duties for all citizens replaced the old structure of class privileges.

The bloodshed attendant on the revolution, and the subsequent adventures of Napoleon incline us, today, to underestimate its achievement: the more so, as many of the ideas which it loosed on Europe are now taken for granted. Equality before the law; the right of all citizens to work in any occupation for which they are fitted, to save and to acquire property; the right to have any religion or none; the belief that political institutions should be judged more by their efficiency than their antiquity—all these ideas are now expressed or implied in every West European constitution. Universal suffrage and the idea of progressive taxation were not, indeed, proclaimed in 1789: but the road to them was opened once it was established that privilege of birth could not give to a class either a monopoly of government or exemption from taxes.

It is easy now, by the use of hindsight, to see the limitations of this philosophy. First, it was profoundly individualist, at a time when Europe was moving towards an industrial revolution which would create a vast need for collective action. This action would be required both to provide health, education and welfare services and to restrain the inequalities to which unrestricted equality of opportunity gives rise. Secondly, its insistence on a man's natural rights—particularly the right to save and acquire—could easily degenerate into a general dislike of being governed at all. Third, it emphasized the rational aspect of man's nature to the neglect of his feelings. Now although men can easily discover solid rational grounds for belonging to a State, paying its taxes and obeying its laws, they do not group themselves into States solely for these reasons. They derive a positive pleasure from belonging to a community of whose achievements they can feel proud. A State which does not produce, by collective action,

worthy achievements of a peaceful kind, will find that its citizens' emotions seek an outlet in the pursuit of military glory. 'Every Frenchman', it was said, when Napoleon was at the height of his power, 'can look at himself in the glass and say "I am one twenty-millionth part of a tyrant".' Revolutionary France was the more easily led along this path when her neighbours intervened to destroy the new regime by force, and when she discovered the immense increase of vigour and efficiency which the Revolution had conferred upon her.

These characteristics—a neglect of social collective action, a contemptuous dislike of government as such and a taste for imperial glory—have remained with France through all the vicissitudes she has experienced since the Revolution. A governmental machine starved of revenue was required to undertake military tasks beyond its strength. In this way the Empire of Napoleon III was destroyed; the effort of the Third Republic to establish a military hegemony in Europe after the first world war ended in the humiliations of Munich and the Vichy regime. From 1946 to 1958 the Fourth Republic struggled with budget problems. Its imperial pride prevented it from making adequate concessions to some of its former subject peoples, and it was exposed to further military humiliation in Indo-China and Algeria. Meanwhile, the contempt for government and for politicians found striking expression in the politics of the working class. In most west European countries the main working-class faith is democratic Socialism—a positive attempt to use the State for collective social purposes. In France the majority of workers turned to Communism which, at any rate in west Europe, is a rejection of the State and a denial of allegiance to it. The existence of a large Communist party, unwilling to join in coalition governments except on terms unacceptable to others, increased the instability of Government.

In the summer of 1958 a military movement of protest against the failures in Algiers, combined with the frigid dislike felt towards the regime by so many Frenchmen, was sufficient to cause the collapse of the Fourth Republic and the inauguration of the Fifth by General de Gaulle. We have as yet little experience of the working of this newest of constitutions. In this chapter, therefore, our task will be to describe the Fourth Republic and then summarize the paper provisions of the Fifth.[1]

[1] In describing the Fourth and Fifth Republics it will be convenient to use the present tense.

THE FOURTH REPUBLIC

Origin and Nature

In 1940 the Germans overran France, the Vichy regime was set up and General de Gaulle announced the foundation of the Free French Movement. Between then and 1945 this Movement grew, linking with other anti-Nazi forces, and became first a Committee of Liberation and then the provisional government of liberated France. An assembly was elected which drafted a constitution: this, however, was rejected at a referendum. A second assembly was more successful: the constitution which it produced was approved in October 1946 by 9,250,000 to 8,000,000 votes. It was ominous that 9,000,000 potential voters abstained from voting. General de Gaulle expressed his disapproval of the draft, believing that it made the government too weak and would prove unworkable.

The opening sections of the constitution reaffirm the Declaration of Rights of 1789, and add thereto certain newer principles. Women are to have equal rights with men; all citizens have a duty and a right to work and to belong to the trade union of their choice: trade unions have the right both to undertake collective bargaining and to share in the management of enterprises. Any enterprise which is a public service or a monopoly is to come into public ownership: and it is stated that 'the nation guarantees, for the individual and for the family, the conditions necessary for their development'. These aspirations towards public ownership and a welfare state were partially fulfilled. Public ownership was carried at least as far as in Britain; social services, except those meeting the needs of large families, were less fully developed.

France is described as an indivisible, lay, democratic and social republic in which sovereignty belongs to the whole people; they exercise it through a National Assembly elected by direct, secret and universal suffrage; and, for constitutional matters, through their elected representatives and by referendum. The French Republic is a unitary state, comprising Metropolitan France and the many overseas possessions of France in Africa, the West Indies, the Pacific, etc. Metropolitan France is divided, for local government, into departments (i.e. counties or provinces) and subdivided into cantons and again into communes, which may resemble an English city, borough, district or parish. These authorities have their own elected councils, with prefects and subordinate officials appointed by the central government to protect national interests and secure uniformity of administration. Some of the overseas possessions, notably Algeria,

are treated in the same manner: politically, the island of Martinique and the various departments of Algeria are parts of the French Republic comparable with, say, the department of Finisterre in Brittany. Necessarily, the overseas departments have a greater measure of autonomy than the metropolitan. Algeria has its own Governor-General and Assembly and a member of the French Government takes special responsibility for Algerian affairs. It bears, therefore, some resemblance to Northern Ireland which has its own Parliament but is part of the United Kingdom. The other overseas possessions are known as territories; they have a less degree of self-government and are not so fully represented in the French Parliament, but it is assumed that most of them will in time acquire the status of departments. The French Empire, unlike the British, had not developed as a Commonwealth, with each part enjoying full self-government. The aim has been to confer freedom, not by increasing decentralization, but by giving to more and more people the rights of full citizenship of the indivisible French Republic. This is an expression of the ideal of fraternity proclaimed at the revolution—the belief that all men, whatever their race or nationality, were capable of sharing a common citizenship and culture. Moreover, both during and since the revolution, the French have been much influenced by Roman ideas: the Roman empire worked on the plan of extending citizenship to all who had reached a certain level of culture. The merit of this idea is it discourages the growth of colour prejudice. In the past, an African or Asian under French rule might find, by comparison with his neighbour in a British colony, that he was ruled more strictly and that his country was, to too great an extent, administered in accord with decisions made far away in Paris. He would, however, be less likely to suffer personal affronts because of his colour, and his chance of rising in the public service by merit might be greater. France's difficulties in Indo-China and Algeria should not blind us to the fact that a very great part of her Empire has remained loyal to the French connection throughout the war and post-war years.

The French Republic, thus defined, is joined with a few other overseas countries[1] to form the French Union. This entity is in effect an alliance; its members are described as pooling their resources for their common protection, and the task of co-ordinating these resources is the responsibility of the Republic. The governmental apparatus of the Union is a President, who is the President of the

[1] Originally Tunis, Morocco and the States of Indo-China: only the last named now remain.

Republic, a High Council and an Assembly. The Council is composed of persons appointed by the Governments of the Republic and of the Associated States, in numbers determined by the treaty which each State has with the Republic. Its work is loosely defined as 'assisting in the general management of the Union'. The Assembly is composed, as to one-third of its membership, of persons chosen by and from the members of the National Assembly representing metropolitan constituencies: as to one-sixth of metropolitan members of the Council of the Republic. The remaining half are chosen by the councils and legislatures of the overseas departments and territories and Associated States. The President decides when to convene the Assembly, but must do so if half its members so require: it can, however, sit only when Parliament is sitting. It is not a legislative body, and can only discuss and express opinions. This it may do on any matter submitted to it by the National Assembly, the Government of the Republic or the Governments of the Associated States; or, on the initiative of any of its members, it may discuss any matter affecting the overseas territories and submit proposals to the Government of the Republic or the High Council of the Union. Further, the decrees which the French Government has the power to make for the government of overseas territories must be the subject of prior consultation between that Government and the Assembly of the Union. The Assembly, therefore, although a Union organ, has been concerned not so much with relations between the Republic and the Associated States as with relations between two parts of the Republic, namely metropolitan France and the overseas territories. In this field it did useful work facilitating the progress of those territories to the status of department.

The Executive

The Head of State is a President elected by Parliament for a seven-year term. He may only be re-elected once, and may not be a member of any of the former French royal families. He is the titular head of the Armed Forces and the representative of the French State in the eyes of foreign powers. Appointments to the higher posts in the civil service, the armed forces, the diplomatic service and the Universities are made in his name. Although he is empowered to ratify treaties, all those of major importance will require legislative approval as well. He has a limited power of pardon, but any general amnesty covering a whole class of offenders can only be granted by law. He creates governments by appointing a President of the Council of Ministers (i.e. a Prime Minister) who then, with the approval of the President

of the Republic, appoints the remaining members of the Council of Ministers (Cabinet) and their juniors. In theory the President of the Republic presides over the Council. In practice he does this only at a limited number of formal meetings; the main business is done at what are nominally informal meetings with the Prime Minister in the chair. In this respect we may compare the President's position with that of the King in Sweden. All his acts require the counter-signature of the Prime Minister and any other Minister specially concerned; he is not personally responsible, except in cases of high treason, for which he can be impeached. Ministers can also be impeached for treason or other grave crimes committed in the exercise of their powers.

Ministers need not be, but usually are, members of one or other House of Parliament; they have the right to attend and speak in either House or in Parliamentary Committees. The government is, however, responsible only to the National Assembly which is the more democratically elected and more powerful House. The appointment of a new government by the President is not valid until the Assembly has passed, by a majority of all its members, a vote of confidence. Once installed, a government remains in power until the next election of the Assembly unless it voluntarily resigns, or is censured by the Assembly, or asks for and fails to get a vote of confidence. The decision to ask for a vote of confidence can only be taken after discussion in the Cabinet on the initiative of the Prime Minister. At least one day's notice must be given in the Assembly of a debate on a vote of confidence or censure; a majority of all members is required to refuse confidence or pass censure. These precautions were intended to avert one of the defects of the Third Republic. During that period governments were shortlived; either a fractious Parliament would hastily defeat the Government, or an exasperated government would ride for a fall by suddenly elevating some particular issue to the status of a matter of confidence. In the event, the Fourth Republic was no more fortunate and the average life of its governments was eight months. The problems of taxation and military expenditure persisted; the framing of long-term policies to deal with them was hampered by the multiplicity of political parties and the tenacity with which each party defended the sectional interests of that part of the population from which it drew its strength. Although both government and Assembly were obliged to think twice before using the formal procedures of confidence and censure, successive Assemblies found it easy so to frustrate governments that they felt obliged to resign. Such a situation tends to increase the power of the Presi-

dent of the Republic, who has to conduct the negotiations among party leaders required for forming new governments.

Assisting the government are two auxiliary bodies, the Economic Council and the Council of State. The former is appointed by the government from representatives of workers, employers, scientists, etc. The government must consult this body about the maintenance of full employment, and may and does consult it about other economic matters; it regularly examines proposed economic legislation and tenders advice to Parliament. The Council of State is a more formal body. Its members are nominally appointed by the President, but in fact are chosen by the various grades of the civil service and the legal profession, with a dozen scientific and technical experts added. This Council has two aspects. On the one hand it is a court, being the highest of the administrative courts which ensure discipline within the civil service and hear complaints against abuse of power by officials. On the other, it is an administrative and advisory body, surveying the recruitment and organization of the Civil Service and advising the Government on the drafting of laws.

The constitution states that the National Assembly alone has the power to legislate, and cannot delegate this right. At first sight this would appear to deprive the Executive of the power of delegated legislation possessed by most governments—a power, indeed, without which modern states can hardly be administered. However, the constitution also makes the Prime Minister responsible for seeing that laws are carried out, and this has in fact meant that the government issues regulations comparable to British Statutory Rules and Orders. These are usually examined in advance by the Council of State. Occasionally the Assembly has been content to pass a law in skeleton form, empowering the Government to fill in the details.

The Legislature

Parliament consists of the National Assembly and the Council of the Republic. The Assembly contains about 620 members, of whom about 540 represent metropolitan France, forty the overseas departments and forty the overseas territories.[1] The populations of these three parts of the Republic are 43,000,000, 10,000,000 and 40,000,000 respectively, so the overseas sections are less generously represented than the metropolitan. All adults are entitled to vote. Candidates must have attained the age of twenty-three and done their military service: they may not be members of the former royal families nor persons who took any prominent part in the Vichy government.

[1] The exact figures could be, and were, varied by law.

Usually, a constituency is a whole department, returning several members according to population. The political parties prepare lists of candidates and the elector votes by selecting one of these and, if he wishes, indicating on it his own order of preference for the candidates, which may differ from that of the party. Seats are then allocated to each party according to the number of votes it has gained. These seats are awarded to the candidates highest in the party's order of preference, unless half the voters for a party have expressed a wish for a different order of preference. This is an attempt to combine proportional representation of parties with a personal tie between elector and elected. Like all variants of proportional representation it tends to encourage multiplicity of parties and inter-party bargains and alliances.

Once elected the Assembly has a minimum life of eighteen months and a maximum of five years. If, during the period between these limits, it overthrows two governments—by censure or refusal of confidence—in eighteen months it may be dissolved by the President on a decision of the Council of Ministers in consultation with the President of the Assembly. During such an election the Prime Minister and the Minister of the Interior (Home Secretary) stand down from their offices; their respective places are taken by the President of the Assembly and by someone agreeable to that body: additional Ministers are appointed from parties and groups not represented in the Government. These elaborate precautions seek to prevent any rigging of the election, or intimidation through the police, by the Government in power: occasion to use them never arose.

The election of the Council of the Republic is extremely complicated and the system was changed more than once during the life of the Fourth Republic. At the end, the Council contained (*a*) about 250 members chosen in each department of metropolitan France by the members of the Assembly for that department and representatives of the departmental council and the smaller local authorities, (*b*) about twenty members chosen in a somewhat similar fashion by the overseas departments, (*c*) about forty members to represent the interests of the overseas territories and the Associated States of the French Union. It was first intended that these should actually be elected by the local authorities of the States and territories. (*d*) Some half-dozen, chosen by the National Assembly to represent the interests of French citizens living in the Associated States or in foreign countries. Councillors must have attained thirty-five years of age; they are elected for six years, half retiring every three years so

that the Council is never dissolved. This Council replaces the Senate of the Third Republic. Local authorities also played a part in the election of that body, and the system was such as to give special weight to rural districts. This put the Socialists, the Communists, and the parties of the extreme right at a disadvantage, and the power and composition of the Senate were a frequent cause of dispute. The cumbrous Council of the Fourth Republic was the result of efforts to reach a compromise; but the powers of the Council were so limited as to make its composition of less importance.

Both Houses meet at the same time and sit for at least eight months each year. The Assembly is the true legislative body, the powers of the Council being, in the last resort, only advisory. Bills may be submitted to the Assembly by the Government, by private members, or by the Council. The Council's bills may not propose reduction of taxes or increase of expenditure; private members, however, may make such proposals and so have a power prudently denied to British backbench MPs. Bills are first sent to Committees of the Assembly and returned, in such form as the committee decides. If the Assembly approve they give the bill a First Reading and send it to the Council. If the Council approve, the bill is passed. If they disapprove, make amendments or fail to give an opinion within two months (or less, if the Assembly so specify) the Assembly holds a Second Reading. If at the end of this process the Assembly has approved a bill disapproved by the Council, or if they have not accepted all the Council's amendments, a final vote is taken, and if a majority of all members of the Assembly (i.e. not merely a majority of those present and voting) approve the bill, it is passed. A final vote of this kind must, like a vote on censure or confidence, be public: on other matters it was possible for the Assembly, if it wished, to have a secret ballot. Members who were absent were sometimes allowed to vote by proxy; neither this practice, nor the secret ballot, was likely to enhance the reputation of Parliament.

The annual budget requires to be passed like a bill, save that the Council cannot amend or reject it. While it is being discussed in the Assembly private members may not make proposals designed to increase the expenditure for which it provides; though, as we have seen, they may at other times propose bills involving expenditure. This serves to keep discussion on the Budget within reasonable length so that the Government may get approval for the expenditure they have themselves proposed.

After the passing of a law the President has ten days within which he can require the Assembly to debate it again: if he does not use this

power, or if the Assembly, after debate, persist in their view, he must promulgate the law. In case of urgency the Assembly may reduce the time-limit to five days. If the President has no grounds for dissatisfaction he may promulgate the law at once.

If the Assembly desires to revise the Constitution it must first pass, by a majority of all its members, a resolution declaring the nature and scope of the revision. Then, not less than three months later it must pass the resolution again in the same manner, unless, meanwhile, the Council has given its approval by a majority vote of all members. The Assembly then drafts a bill, giving effect to the resolution, which goes through the usual process of legislation. If Assembly and Council both pass it by a three-fifths majority, or if it is rejected by the Council but approved on Second Reading by a two-thirds majority of the Assembly, it is passed and must be promulgated by the President within eight days. If it fails to satisfy these conditions but does satisfy those required for an ordinary law, it is submitted to popular referendum where a majority of those voting decides the issue. A referendum is also required for any revision affecting the Council of the Republic unless that body has itself given its approval. The republican form of government may not be the subject of revision; nor may revision be attempted when any part of metropolitan France is occupied by an enemy. This last rule recalls the hurried and discreditable revision made in 1940, which ended the Third Republic and established the Vichy regime.

It is open to the Council to express, by majority vote of all its members, the view that a law sent to it by the Assembly is in conflict with the constitution and therefore cannot be passed unless the constitution is revised. When this happens the issue is referred to a Constitutional Committee presided over by the President of the Republic. Its members are the Presidents of the Assembly and the Council, seven persons chosen by, but not members of, the Assembly, and three persons chosen by, but not members of, the Council. Council and Assembly set up this Committee at the beginning of each annual session. The Committee examines the disputed law and tries, first, to suggest an amended form on which the two Houses can agree. If this fails, the Committee must, within five days from its first handling of the matter, give its decision, which settles the issue.

One curious feature should be noticed here. The Council is empowered but not obliged to object to a law on constitutional grounds. If, therefore, Assembly and Council agree, they can pass laws which in fact contravene the Constitution, nor is there any court which can annul such laws. This apparently slipshod drafting is not without

advantage. It enables Parliament to deal expeditiously with certain matters which most students would call constitutional, but are not explicitly mentioned in the Constitution. When that document was framed there were several matters on which complete agreement could not be reached. There was, for example, the composition of the Council of the Republic, and several of the details of the organization of the French Union. The Constitution usually stated that such matters were to be provided for by an 'organic law' though no special conditions were prescribed for the passing of organic, as distinct from other laws. We may take an organic law to be one which deals with the structure of government, and is therefore, in the ordinary sense, constitutional, but does not form part of the written Constitution. It would be such laws which could be challenged by the Council and possibly declared unconstitutional by the Constitutional Committee.

The Judicature

In each canton a professional magistrate deals with minor civil and criminal cases. Above him there are separate higher courts, with civil and criminal jurisdiction respectively, presided over by judges and dealing with more serious cases. There are also courts for settling trade and industrial disputes whose members are elected by employers and employees. From all these appeal lies to the Appeal Courts, each of which serves an area usually embracing two or three departments. The gravest criminal cases are tried by the Assize Courts which alone make use of a jury. There is a similar hierarchy of administrative courts at the head of which, as we have seen, is the Council of State. Finally there is the Court of Cassation to which appeal lies from all courts on points of law; its task is to ensure that correct procedure and principles of law are observed.

Impeachments, whether of the President or Ministers, are tried before a High Court of Justice composed of judges elected by each National Assembly immediately after it has itself been elected. To begin the process of impeachment the National Assembly must so decide by a secret vote and a majority of all its members except those who may be in any way involved in the trial.

In order to maintain the independence of the Judicature, the appointment promotion and disciplining of magistrates is entrusted to a Superior Council of the Magistrature. This body is distinct from Executive, Legislature and Judicature but issues from all three. The President of the Republic is its Chairman and the Minister of Justice its Vice-Chairman. There are twelve other members, who

serve for a six-year term. Six of these are chosen by a two-thirds majority vote of the National Assembly, but may not be members of that body. Four are elected by the judges and magistrates from among themselves, each rank in the profession being represented. The remaining two are appointed by the President; they must be lawyers, but not members of Parliament, judges or magistrates. The President of the Republic has, in the deliberations of this Council, both his own vote and if necessary a casting vote: if the Council imposes penalties on a defaulting judge or magistrate the President may exercise a right of reprieve. It will be seen in a later chapter that the Italian Republic also uses the device of a special Council of the Magistrature, but the Italian Council is a more judicial body. All its members, except the President of the Republic, are lawyers and two-thirds of them are chosen by and from judges and magistrates.

FROM FOURTH TO FIFTH REPUBLIC

The death of the Fourth Republic was due partly to constitutional defects and partly to more profound political reasons. For a document seeking to establish the government both of France and her overseas possessions, the Constitution was sketchy and imprecise. Important matters, such as the composition of the Council of the Republic were left for later decision. An absolute prohibition of delegated legislation was asserted, in the knowledge that necessity would compel evasion of it. The arrangements for revision of the constitution were at the same time elaborate and capable of being circumvented. A proportional method of election was adopted which, in the political climate of France, was bound to produce a multiplicity of parties and consequent instability of government: it was not surprising that the constitutional rules concerning votes of confidence and censure failed in their object. The supervision of local government by prefects appointed at the centre remained. Although the French were familiar with this arrangement and could make it work smoothly enough in the administrative sense, it helped to strengthen the impression that government is a matter for officials ministers and members of Parliament rather than for the people as a whole. The cleavage in thought and sympathy between 'we'—the ordinary citizens—and 'they'—the government—was profound.

These defects alone would not have destroyed the regime if there had been a strong sense of national unity or if the domestic and foreign problems facing France had been simple. Neither of these conditions was fulfilled. We have seen how persistent was the ten-

dency of the French to regard all government as an imposition on the individual; and we have noted how, among the working classes, this feeling expressed itself in an attachment to Communism. There were other reasons for this attachment. The conflict between rich and poor was insufficiently mitigated by social services. Many Frenchmen, fearing a recrudescence of the German menace, doubtful of British policy and resentful of America's preponderance in NATO, considered that friendship with the USSR was essential to France. The Communist party became the largest in the Assembly: but, seeing what happened to those who collaborated with Communists in other European countries, no party was prepared, after the first few months of the Republic's life, to join with them in forming a Government. The Socialists, and the centre parties—Radicals and Popular Republican Movement—were unable to form governments without making concessions to the Right which weakened their hold on their own supporters. Every policy which was devised to keep the economy sound became unpopular either because of the taxes it imposed on the rich or the sacrifice it demanded from the working class. Every considerable section of the people—manual workers, salaried employees, farmers, vine-growers—could find some group in the Assembly which would press their claims even to the point of destroying a Government. Meanwhile, the war against the insurgents in Algeria became increasingly discouraging and expensive. Attempts to end it by making concessions to the insurgents were resisted by the *colons*—the people of French descent settled in Algeria. Governments constantly uncertain of their majority in the Assembly would not risk the further unpopularity that would be caused by a resolute policy of either repression or conciliation.

When the lawfully constituted Government of a nation cannot govern, power goes to those who can command the support of the armed forces. In the summer of 1958 it became clear that a group of Army officers in Algeria, advocates of an all-out policy to defeat the insurgents, commanded sufficient force to overthrow the Government; and that the only person who could outrival them in getting the loyalty of the troops was General de Gaulle. His services to France in 1940 were remembered. He had, from the start, made known his lack of faith in the Constitution; and, by remaining aloof from politics for several years, had preserved his reputation as an honourable soldier. The French, under threat of civil war, turned from King Log to King Stork—from an exhausted system to a Strong Man. Established as Prime Minister, the General speedily produced a new Constitution which was approved at a referendum by

four-fifths of those who voted. Moreover, five-sixths of those entitled to vote actually did so. The Fifth Republic, at its inception, secured a definite 'Yes' from nearly twice as many people as had ever given positive approval to the Fourth. How far this was due to real enthusiasm, and how far to fear of civil war or disgust with the past, it would be hard to assess.

THE FIFTH REPUBLIC

It is clearly too early to say how this new regime will work, and it is sufficient here to list the main respects in which the Fifth Republic differs from its predecessor.

Nature and Structure of the State

France remains an indivisible, lay, democratic and social republic based on the principles enunciated in 1789, as extended by the Constitution of the Fourth Republic. The additional phrase 'she respects all faiths' may make the assertion that she is a lay, or secular state more palatable to believers. A provision that political parties may freely participate in the process of voting provided they respect 'national sovereignty and democracy' might be, but has not yet been, used to ban Communist or Fascist parties. The chief change is in France's relation to her overseas possessions. The Republic, in future, will consist of the metropolitan and overseas departments only. The overseas territories can choose for themselves whether to become completely independent and separate, or to join with the Republic in forming a Community of which the President of the Republic is the head. It is not clear how much autonomy the members of the Community, other than the Republic, will enjoy. It appears likely that the Republic will continue to legislate for them in most matters, but there is provision for progressive transfer of subjects, other than foreign policy and defence, to the legislatures of the various members. A Senate of the Community chosen by Parliament and the legislatures of the members will hold brief sessions and advise the Republic about legislation affecting the Community. The consent of this Senate is necessary if the Parliament of the Republic wishes to alter the section of the Constitution dealing with the Community. An Executive Council, composed of the Prime Ministers and Ministers for Community Affairs of all members of the Community, including the Republic, assures co-operation in carrying out the laws. A Court of Arbitration, with unspecified membership, settles inter-Community disputes. The few remaining Associated States of the former French

Union are not mentioned; they will presumably remain separate States in treaty relationship with the Community. We have here, still, a centralized imperial system, but with opportunities for increasing decentralization. The economic aid now given by France to her overseas territories will probably induce nearly all of them to remain in the Community.

The Executive

General de Gaulle had long favoured 'Presidential Government' on the American model, with a powerful Head of State or Head of Government, separate from the legislature. The main changes, therefore, concern the President's position and the general tone of the Constitution is such as to exalt his dignity and powers. He is to be elected by a large college containing all members of Parliament, very many representatives of local authorities and some representatives of overseas members of the Community. He can thus claim, like the American President to have got, from the whole people, an authority distinct from that of Parliament. He appoints all Ministers, who will, like an American Cabinet, be precluded from membership of the legislature though they will have the right to attend its meetings and address them. Most Presidential acts still require Ministerial counter-signature, but there are significant exceptions. When laws of major importance are passed, either the Government or Parliament may propose that they be submitted to referendum, and the President decides for himself whether or not this shall be done. He may also, on his own decision, after consulting the Prime Minister and the Presidents of the two Houses, dissolve the National Assembly, though not more than once in a year. He may send messages to Parliament. His relations with the Constitutional Council, described later, are a matter for himself alone. Above all, if he considers the State to be in danger he 'takes the measures required by the circumstances'; he must consult about them with the Prime Minister, the Presidents of the two Houses, and the Constitutional Council but is not, apparently, bound to follow advice. It appears, also, that his duty of presiding over the Council of Ministers will in future be more than formal: the circumstances in which the Prime Minister may do so are specifically limited. As the Constitution stands, a President could either make himself effective Head of Government as well as Head of State, with the Prime Minister as little more than a senior member of his Cabinet: or he could be content with nominal and advisory powers, leaving the main work to the Prime Minister. While de Gaulle remained Prime Minister, the latter plan was adopted:

now that he is President, the former—which is more in accord with the spirit of the Constitution—is likely to become accepted practice.

The Legislature

The National Assembly remains, elected by direct and universal suffrage but on a different plan. Constituencies may return one or several members. The elector votes for the candidates of his choice, having as many votes as there are seats to be filled. Candidates who get more than half the votes cast are elected. The remaining seats are the subject of a second ballot, a week later, at which the candidates at the head of the poll, whether with or without a clear majority, are elected. It is expected that this system will hamper extreme parties, whether of Left or Right. For the present the Council of the Republic is to act as a Senate; but a new Senate is to be created, in the election of which the local authorities and French citizens living abroad will take part. This Senate will be more powerful than the former Council, since legislation will normally require the consent of both Houses. If a bill is passed by one House and rejected by the other, it falls unless the Government decide to act. If they do so decide, they will first call a conference, with equal membership from each House, and endeavour to reach agreement: if this fails the government may, but need not, empower the Assembly to decide the issue.

The ordinary sessions of Parliament are limited to two-and-a-half months in the autumn and not more than three months in summer. The Prime Minister may call for special sessions as he thinks fit. A majority of the Assembly may also require a special session to be held, but it must deal only with business specified in advance, cannot last more than twelve days and cannot be called again till at least a month has elapsed. Except for one period a week when Ministers may be questioned, Parliament's function is restricted to legislation. Since this is so defined as to exclude administrative detail, the Government is empowered to expand and modify laws by issuing regulations, on which it must take the advice of the Council of State. The Government may also issue ordinances having the force of law, but only for a limited period and for purposes described to Parliament in advance. Bills may be proposed either by the Government or by private members of Parliament: but the latter may not make proposals which reduce taxes or increase expenditure. Money Bills go first to the Assembly; but if that body does not, within forty days, give its approval, the Bills go to the Senate and, if passed there, are then submitted to the procedure, described above, for Bills about

which the Houses disagree. If, however, Parliament as a whole has not approved the Government's financial proposals within seventy days of their being presented, the proposals can be put into effect by ordinance.

A newly appointed Government is no longer required to start its life by obtaining a vote of confidence, though it will make declarations of its policy to the Assembly. To challenge the Government, a vote of censure must be put down, signed by at least one-tenth of the members of the Assembly. The vote must be taken not less than forty-eight hours thereafter; the only votes counted are those supporting the censure, and these must total more than half the whole membership of the Assembly if the vote is to be carried. A member may not put his signature to a censure proposal more than once in a session. Further the Government may decide to declare any particular measure a matter of confidence: such a measure is then deemed to have been carried unless a vote of censure is put down and approved. To censure motions of this kind, however, a member may put his signature more than once in a session. The passing of any censure motion means the resignation of the Government.

The combined effect on Parliament of all these measures is formidable. Its sessions are brief, its powers overshadowed by regulations and ordinances. Not only does the private member lose his power to make financial proposals: Parliament as a whole finds that the Budget can be passed over its head. In the last resort, it can still overthrow the Government: but it is required to take the whole initiative and responsibility for doing so. Moreover, the arrangements for voting on censure are such as to thrust well into the limelight those members who oppose the Government. In a censure debate, a member can support the Government by keeping silent: to oppose, he must openly vote and perhaps sign the motion as well. All this is to prevent irresponsible and secret intrigue against the Government, such as occurred in the Third and Fourth Republics. It may well be, however, that the Fifth Republic has, in the homely phrase, 'emptied out the baby with the bath', and that Parliamentary government has been not so much reformed as extinguished.

The same tendency persists in the arrangements for the Constitutional Council. This is now to be composed of three members named by the President of the Republic. A vagueness which we observed in the Fourth Republic's Constitution is removed by the statement that all organic laws must, before promulgation, be submitted to the Council: other laws may be so submitted if the President, the Prime Minister or the President of either House should so require.

If the Council declare a law unconstitutional it may not be promulgated. The Fifth Republic will therefore have five clearly defined categories of law: (1) The Constitution itself, setting the main framework for the distribution of power in the State; this can only be altered by special procedure. (2) Organic laws, dealing with the details of the distribution of power; these must be submitted to the Constitutional Committee. (3) Ordinary laws, which may be so submitted. (4) Government ordinances, dealing with the same type of matter as ordinary laws and having the same force, but only for a period defined by Parliament. (5) Government regulations, or decrees. If, to illustrate this matter, we try to list comparable British categories we may notice (1) Acts such as the Parliament Acts and the Act of Settlement, which are written parts of the British Constitution. (2) Acts such as the Representation of the People Acts, which deal with the holding of elections. (3) Ordinary legislation such as the Rent Act. In Britain laws of these three types are all passed in the same manner, save that an Act altering the succession to the Crown requires the consent of the other Commonwealth Parliaments, and an Act lengthening the life of Parliament cannot be passed by using the Parliament Act procedure to override the Lords. The French category (5) is paralleled by British Statutory Rules and Orders: and the more far-reaching of these may, though with caution, be compared to the French category (4).

Revision of the Fifth Republic's constitution may be proposed by the President on the Prime Minister's recommendation, or by Parliament. Two procedures are permitted. The proposal may be first approved by both Houses and then submitted to a referendum, which decides the issue. Alternatively, the President may summon a joint session of both Houses: if this congress approves by a three-fifths majority, the revision is made: if it approves by a lesser majority than this, a referendum is held. Revision may not be proposed if French territory is even threatened by an enemy; nor, in any circumstances, may the republican form of government be altered.

The Judicature

There are two main changes here. First, the High Court of Justice, before which the President or Ministers can be impeached, will be chosen by both Houses, not by the Assembly alone: it will contain an equal number of Senators and members of the Assembly, elected by those bodies. Second, the Superior Council of the Magistrature will consist of the President of the Republic, the Minister of Justice, and nine persons appointed by the President. The conditions of their

appointment are yet to be determined, by an organic law. We cannot at present say how far the judges and magistrates, and the National Assembly, will retain their powers over the composition of the Council.

General

Only the future can disclose how this Constitution will work, but its nature and intention are clear enough. It drastically reduces the powers of Parliament as against the Executive; and, within the Executive, it enables the President to overshadow his Ministers. In outward form, there have been some borrowings from the American model, where Executive and Legislature are separated, and from the British, where the powers of Parliament to harass the Government in detail are more restricted than under the French Fourth Republic. There is, however, a deeper resemblance to two other models. If we look at the brief Parliamentary sessions and the restriction of Parliament's functions, we are reminded of English government under the Tudors, or even earlier. So far as any clear constitutional doctrine then existed it was to the effect that the monarch governed the realm, making policy as he saw fit, within the framework of law. Parliament's only certain functions were, occasionally, to alter the law and to grant money; in addition it could, though with caution, express humble opinions about executive policy. Such a system worked when law did not need frequent alteration and when demands for money were not too great. When a more rapid rate of economic and social change swept away those two conditions, this division of power between monarch and Parliament became unworkable and the English had to decide where Sovereignty was to lie. Under the Fifth Republic, the provisions for legislation by ordinance and for thrusting the Budget through Parliament give the Executive a stronger legal position than an English Tudor monarch, and make more difficult any assertion by Parliament of its rights. If we look at the powers and method of election of the President we see a Napoleonic or Caesarean idea—the conception, in fact, of a Strong Man, owing his position to widespread popular acclamation and using his power to guide and protect the State. These comparisons, however, do no more than illustrate particular facets of the Fifth Republic and suggest various possible developments in the future. Prediction is made more difficult by the apparent contrast between the humanity of General de Gaulle and the ferocity of some of the military leaders who gave him his opportunity. It is certain that the French people, feeling themselves incapable of democracy, have retreated from it: whether they now enter a period of tutelage or of bondage is yet obscure.

CHAPTER XI

Scandinavia

Origin and Nature of the Constitutions

Teutonic myth tells us that Heimdal, the messenger god, created mankind in three groups: earls, from whom Kings developed; churls, or landowning freemen; and thralls, or landless dependants. The story throws light on those early institutions from which Scandinavian forms of government, like English, are sprung. The folk are led by a King exercising traditionally defined powers in consultation with notable men whose position has been attained by valour in war or wisdom in council and consolidated by the acquisition of wealth. Their powers are likewise traditionally defined and subject to some control by local assemblies of freemen. With the passage of time warfare, whether offensive or defensive, strengthens the position of the King. In order to rest his power on a broad foundation, he seeks help and counsel not only from hereditary nobles but also from people representative of any groups of his subjects who make a substantial contribution to the wealth and power of the realm. 'Representative' does not, at first, imply any formal election; it describes people who will be acceptable to the class from which they come, and can speak for it; but this is the first step to an elected assembly.

But whereas Britain was subject to conquest by Saxon, Danish and Norman invaders, Scandinavia was the source from which the torrents of invasion poured east, west and south over Europe. The ideas of domination and subjection played a large part in English society and serfdom became the lot of a great section of the people. In Scandinavia, while the more domineering and aggressive sought their fortunes overseas, there was more opportunity for those who remained to secure the status of freemen and the ownership of the land, on which they worked. By the 14th century England had a Parliament of two houses, one representing the lords spiritual and

temporal, the other the burgesses and the landowning 'Knights of the Shire'; Sweden had a *Riksdag*[1] of four estates, the clergy, the nobility, the burgesses and the peasant-farmers. There is an obvious similarity of structure, and a comparison may even be made with the four castes (priests, military nobles, merchants and labourers) established by the Aryan invaders of India: but the Swedish estate of peasant-farmers was far more representative of the whole rural population than were the English Knights of the Shire.

Danes, Swedes and Norwegians are closely akin in race and language, and after the Reformation the vast majority in each nation became Protestant. At one period it looked as if the whole area would be united under Danish leadership: but geography, with its military and economic consequences, which in Switzerland thrust disparate elements together, in Scandinavia separated kinsmen. Swedish interests and ambitions lay towards the Baltic and Russia; she threw off Danish rule and, in the 17th and 18th centuries was a formidable Power. Denmark's interests lay more to the west and south; as the possessor of an important navy she became involved in the conflict between Britain and Napoleon, at the end of which Norway was transferred from Danish to Swedish rule. By this time it was apparent that the industrial revolution was so changing Europe that the Scandinavian countries could not be more than minor powers. However, their long record of limited monarchy and Parliamentary government, and the absence of serfdom, equipped them to make good use of the democratic ideas radiating from the French and American revolutions. Sweden in 1809 and Norway in 1814 established constitutions which were then the most democratic in Europe; during the 19th century they proceeded, by successive extensions of the franchise, to complete democracy. The Norwegians, whose country was the poorest in natural resources, developed an extensive mercantile marine. This created problems of consular representation abroad in which Sweden had little interest. Norway therefore found her position as an autonomous country under the Swedish crown unsatisfactory, and in 1905 secured her own King and complete independence. Denmark's progress to democracy was not assured until agrarian reforms in the latter half of the 19th century revived the vigour of her rural population. She established a modern constitution in 1915 which was drastically revised in 1953.

The forces, then, which have fashioned democracy in the three

[1] The word 'Parliament' will hereafter be used in this chapter to translate the Swedish *Riksdag* (Council of the Realm), Norwegian *Storting* (Great Assembly) and Danish *Folketing* (People's Assembly).

Scandinavian countries are these: a basic tradition akin to that of England, but with less social and economic inequality; a study of French and American constitutional theory; ties of race, language and religion which made mutual understanding easy; a realization that, for geographic and economic reasons, this mutual understanding between independent nations was a better solution than attempts to create a united Scandinavian realm; a resolve that, for the same reasons, external military adventures were to be avoided and foreign policies directed to the promotion of world peace. We find in each country, resulting from these factors, a constitution which is, like the American 'written' but is as flexible as a written constitution can well be; a King who nominally governs but in practice works with and follows the advice of ministers responsible to a Parliament; a separation of legislative and executive power more firmly proclaimed than in Britain but less strictly observed than in America. Since Scandinavia has neither America's federalism nor Britain's regard for hereditary privilege the major reasons for a two-chamber legislature are lacking; and we do in fact find a tendency towards unicameral government, though only Denmark has completed this development.

It is noteworthy that—apart from a Swedish Freedom of the Press Act—freedom of the individual, the rule of law and independence of the judicature are stated or implied briefly and without emphasis; and the Parliaments, particularly in Sweden, have prestige and powers which overshadow the courts. Why does this happen in countries where, in fact, law, justice and liberty are firmly established? Partly because, as we have seen, the Parliaments were, at an early date, more fully representative of the people than in Britain or elsewhere; consequently it was the power of Parliaments rather than of courts which was judged to be the safeguard of liberty. In the 18th century a corrupt British Parliament was trying to prevent the publication of its debates, and it was the courts of law who shielded the publishers from penalties. In the same century a Swedish Parliament, having asserted its power against the King, passed a Press Act to ensure and encourage free reporting of and comment on its work. The modern form of this Act, passed in 1949, ranks with the Instrument of Government (the main constitutional document) and Acts regulating the succession to the throne and the election and procedure of the Parliament, as a fundamental law only to be altered by special procedure. Further, in all Scandinavian constitutions, attempts to prevent Parliament doing its work or exercising its authority are stigmatized as treason; and this is regarded as a pro-

tection of, not a derogation from, popular liberty. Scandinavian peoples think of their Parliaments as 'we' rather than 'they'. We should notice also that the homogeneity of the populations and the absence of marked class distinctions has bred a mutual trust and goodwill between citizens; denial of justice and the arbitrary use of executive power are so unlikely that elaborate precautions are unnecessary.

The Executive

In each country executive power belongs to the King and is exercised through a Council of State of about a dozen ministers. The King and, in Norway, at least half the Ministers, must be of the Lutheran faith. Decisions of the Council must be countersigned by the minister whose department is concerned and ministers may be impeached if they promote or assent to unconstitutional action. We have here the theory, familiar to Englishmen, that the King can do no wrong, but that his ministers can, and can be called to account. The wording of the Swedish constitution implies that the King can do as he pleases, and there is provision for a minister to resign if he cannot, constitutionally and in good conscience, countersign the King's orders. Since, however, the dread of impeachment would prevent anyone from taking his place and assisting the King in unconstitutional action, this provision does not operate; and in Sweden, as in Norway and Denmark, King and Council work like their counterparts in Britain. Ministers, though nominally chosen by the King, are in fact the leading members of the party or parties which form a majority of the Parliament. They work on an agreed policy for which they are collectively responsible, though in Norway there is express provision for settling differences of opinion in the Council by majority vote. In Sweden the Council frequently meets under the presidency of the King in person but these meetings only ratify, formally, decisions already reached by the Council sitting as a Cabinet with the Prime Minister in the chair. In Denmark and Sweden ministers need not be, but usually are, members of the Legislature. In Norway they may not be; but in all three countries all ministers may attend the legislature and speak, though voting only if they are members.

The King in Council has in each country the power to issue ordinances having the force of law provided they do not conflict with existing law. These ordinances are valid for only a few months unless approved and kept in force by Parliament; they are therefore comparable to British delegated legislation.

Foreign policy and defence are regarded as particularly within the province of the executive, but the power of Parliament, each year, to grant or withhold taxes, places these matters under the final control of the legislature. It is further provided, in Norway, that Parliament shall determine the size of the armed forces. In Sweden the King must consult about foreign policy not only with the Council of State, but with an Advisory Council which is a committee of Parliament. In all three countries, important treaties must be submitted for Parliamentary approval: and the same is true, necessarily, of treaties whose operation would require changes in the law.

The King, on the advice of his ministers, may confer honours; but these are purely honorific, accompanied neither by special privileges nor (as in Britain) a seat in the legislature: only in Sweden may they take the form of hereditary titles. The King may likewise pardon or reduce the punishment of criminals, and there is the curious provision that the criminal may refuse this clemency if he wishes. Those convicted by impeachment can be saved by the King's mercy from death but not from lesser penalties. Impeachment, however, is practically unknown; and, in any event, the death penalty in Scandinavia is restricted to treason and certain grave military offences of a treasonable nature.

In Norway and Denmark the several ministers conduct their departments, assisted by junior ministers and civil servants in the usual manner. In Sweden the routine of administration is carried out by administrative boards subordinate, not to the particular minister, but to the Council of State as a whole. The ministry—that is to say, the minister and his own staff—are chiefly concerned with studying the effects of policy, relating them to national need, and preparing new legislation. The minister has also his 'cabinet' duties—the framing of policy as a whole, as a member of the Council of State. So sharp a cleavage between policy-makers and administrators is unique. It might be claimed that it frees ministers to study the larger aspects of policy; indeed, it has been admitted, in Britain, that the burden of routine tends to hamper such study. On the other hand, lack of detailed experience may make a man's study of policy nebulous and unrealistic; and a board of officials, uncontrolled by a political chief, may become bureaucratic and unamenable to new ideas. The system, however, was not adopted in Sweden as a result of weighing arguments of this kind; its explanation is historical. Formerly the boards were both administrators and policy-makers; the 19th-century trend towards democracy and increased social services meant a demand for new policies framed by ministers

responsible to Parliament and in touch with the people; but respect for the integrity and competence of the civil service prevented the abolition of the administrative boards.

The Scandinavian countries have succeeded in creating civil services which are unaffected by party politics. Systems of recruitment and promotion are established by law in agreement with the Civil Servants' own associations. The general rule is that civil servants have security of tenure of their posts guaranteed by the constitution, and they can only be dismissed for specified reasons after a judicial process. Those who hold the highest positions, in the civil service and the armed forces, can, however, be removed at the pleasure of the Council of State. This would only be done if they had proved unequal to their tasks, and they would be transferred to other posts in the service. We have here a device for ensuring that ability, as well as seniority and loyalty, will be rewarded.

The Legislatures

Sweden: The Swedish Parliament has a First House[1] of 150, and a Second House of 230 members. The First is elected by the councils of the provinces and of those cities which (like English county boroughs) are not, administratively, part of a province. These local authorities, elected for four years in every even year which is not a leap year, are grouped into constituencies and the provincial and city councillors in each constituency meet to elect a number of members proportionate to its population. The members for one-eighth of the constituencies retire each year, so the term of office in the First House is eight years. The Second House is elected every leap year directly by the people, in territorial constituencies with representation proportionate to their population. All Swedish citizens who have reached the age of twenty-three may vote for the Second House and for the local authorities which elect the First; and, save for obvious disqualifications, they may also stand for election to either House. Members of the Second (but not the First) House must reside in their constituencies. Sweden, Norway and Denmark all use proportional systems of voting which ensure that the proportion of seats won by each party is close to the proportion of the total vote which it secures in the country: but the Swedish plan is such as to give some advantage to larger parties. Historically, the proportional system was adopted in order to balance the claims of town and country, but

[1] Note this use of words. What Sweden calls the 'First House' would, because of its method of election, be elsewhere described as the 'Second Chamber' or 'Upper House'.

the Swedish electoral law gives a slight advantage to rural areas. Either House, or both together, may be dissolved by the King in Council at any time; but the members chosen at the resulting special election only hold the seats until the date for the next normal election arrives. Such dissolutions are necessary if constitutional amendments are to be made; apart from this they have been rare in this century. The Swedish constitution requires that Parliament shall be summoned each year in January, shall sit till June and reassemble for a shorter period in the autumn, using seven months of the year in all. Extraordinary sessions must be held at other times if sixty-five members of the First House or 100 members of the Second so require, or the Government think it necessary. Each Parliament opens with a lengthy general debate on the Budget, which is subsequently remitted to the Finance Committee, reported back to Parliament and approved with such alterations as Parliament or the Committee has seen fit to make. The laws which Parliament makes to give effect to the Budget, unlike other laws, do not require the Royal Assent: but since that Assent is never nowadays refused, the distinction is now only formal. Similar long debates sometimes occur over Government statements on foreign affairs or other items of major policy. Government proposals for new legislation are not submitted to Parliament until the Council of State has first consulted about them with the Law Council, composed of judges from the highest courts, and with the authorities affected—i.e. administrative boards, local authorities, professional bodies, etc. Parliament sends them to its appropriate Committee either immediately or after a short debate, and then proceeds with them as with the Budget. The term 'proposal' is used for all Government business brought before Parliament. Bills—i.e. private members' proposals for legislation can only be introduced except by special leave, in the first fifteen days of a session: if they survive discussion in Committee and Parliament they become, in effect, a request to the Council of State to prepare and present a Government proposal for legislation. Private members' amendments to Government proposals must usually be tabled within ten days of the tabling of the proposals. Members have also the opportunity—though not so extensively as in Britain—to put questions and interpellations (questions accompanied by argument and debate) to Ministers.

In addition to the ordinary Budget, Parliament approves each year an emergency military budget on which the King in Council may draw, after consulting the Advisory Council on Foreign Affairs, in time of war or danger to the realm. Parliament may also approve an

exceptional budget for emergencies other than military, and will prescribe the circumstances in which it may be used.

The Constitution requires that all items of business shall be discussed simultaneously in the two Houses, so that neither shall influence the other. Some manipulation is needed to adapt this requirement to what is practicable; this, and other procedural matters are handled by a conference consisting of the Speakers and Deputy Speakers and a few members elected by each House.

The ten Committees of Parliament are joint bodies consisting of an equal number of members from each House, chosen in proportion to party strengths. They deliberate in private and no minister may be a member, or attend their meetings except when required to do so by the Foreign Affairs Committee. Three of them divide the work of examining proposed legislation. Two—Supply, and Ways and Means —examine the budget, and the committee on Banking supervises the Bank of Sweden and the National Debt Office. We have noticed that the Foreign Affairs Committee is also, in effect, the Foreign Affairs Council with a constitutional right to be consulted on important issues by the King. There remain committees on Agriculture, Miscellaneous Affairs and the Constitution. This last has wide powers. It keeps the fundamental laws under review and may recommend changes in them; it is the final authority, even above the Speakers' Conference, on procedural questions in either House. It examines the minutes and work of the Council of State and can impeach a minister or request his dismissal. In fact, a minister who had clearly lost the confidence of Parliament would resign rather than wait for such extreme measures to be taken. The Committee, however, by virtue of its powers of supervision and inquiry, is a powerful instrument for control of the executive by the legislature.

The power of the legislature is still more apparent when we notice that every four years a body consisting of an equal number of members of each House appoints Civil and Military Procurators. These officials, men of high legal standing, keep the whole work of the executive under review and report to Parliament; they are empowered to prosecute officials of all ranks who have infringed the law. They may also impeach any or all of the members of the Supreme Court and Supreme Administrative Court. Another body similarly chosen by and from the two Houses elects all the commissioners of the Bank of Sweden save one who is appointed by the King; yet another appoints the officials who perform the duties of a British Auditor-General. Further, every four years each House chooses twenty-four of its members to make up a body which

examines the suitability of members of the Supreme Court and Supreme Administrative Court and decides whether or not they shall be retained in office. All these measures suggest a degree of suspicion of judges and officials which does not exist; their real effect is to give Parliament the position of guardian of the constitution which in most other countries belongs to the Supreme Court. This illustrates again the Scandinavian respect for elected members and the tendency to trust to them rather than to lawyers.

The Swedish Parliament is clearly not bicameral in the usual sense, since so much of its work is done by joint bodies and committees. The same word—Riksdagsman—is used for members of either House. If the two Houses of a legislature be thought of as brothers, the Swedish Houses are Siamese twins. Disagreements can occur only in those stages of procedure which are taken in each House and not in Committee; if they arise, efforts are first made to resolve them in Committee. Should this fail, and the matter be one (such as the Budget) on which some decision must be reached, each House divides and the total of Ayes and Noes in the two together decides the issue. If it is not essential to make a decision the matter is dropped. On all occasions, whether in either House or in Committee, when a division results in a tie, the question is settled by drawing lots.

No Parliament in a country with a written constitution can be completely sovereign, but the limitations on the Swedish Parliament are few and simple. Legislation affecting the Church requires the consent of the Church Synod. In grave emergency an Act may be passed postponing Parliamentary elections for not more than a year, but it requires the consent of three-quarters of those voting in each House. Such postponements may be repeated as long as the emergency lasts. Alterations to the fundamental laws may be proposed either by the King-in-Council to the Parliament, or *vice versa*: if both are agreed the alteration is later submitted to the first Parliament meeting after the next general election of the Second House, and if that Parliament agrees the alteration is made: a simple majority vote is sufficient on both occasions. The electorate are thus given an opportunity to pronounce on constitutional amendments.

Parliament may and occasionally does enact that a referendum of the whole people be held on any proposal or policy. This, however, is no limitation on Parliament's power since it is never obliged to hold a referendum nor is it bound by the result: the process is purely consultative.

Norway and Denmark: The Norwegian Parliament of 150 members, and the Danish of 179, are both directly elected as a single body by proportional representation for a period of four years. All citizens who have reached the age of twenty-three are entitled to vote: the qualifying age for membership of the House is thirty in Norway and twenty-five in Denmark; members must live in their constituencies. All the Norwegian members represent territorial constituencies, which return from three to seven members and are so arranged that 100 members are chosen from urban and fifty from rural areas. In each constituency, the total votes of candidates of each party determine, proportionately, the number of seats that party has won: then, if a party has won, say, two seats, the two of its candidates who secured more votes than any others of their party are elected. In Denmark 139 (including two from the Faroe Islands and two from Greenland) are elected territorially: then forty are added, chosen by the parties in such numbers as to make party seats proportionate to total party votes.

Both Parliaments, like the Swedish and unlike the British, divide themselves into committees which specialize in particular subjects. The process of legislation is similar to that in Britain, save that discussion in the House, before a bill goes to committee (the British Second Reading) is brief, and the committee stage consequently gains in importance. Both, as in Sweden, have the power to review the work of the Council of State and, in extremity, to impeach ministers and judges; but neither has such wide powers of supervision over executive and judicature as are enjoyed by the Swedish Parliament. The Danish Parliament, however, appoints a Commissioner to watch the work of Government Departments, hear complaints from citizens, and recommend improvements in Departmental procedure.

The Norwegian Parliament, immediately after an election, chooses, by proportional vote, thirty-eight of its members to form the Lagting, the remainder being the Odelsting or main assembly. All Bills commence in the Odelsting; if they are twice rejected by the Lagting, a joint sitting of the whole Parliament decides the issue. The Lagting is likely to contain a high proportion of the senior members of Parliament; but since party strengths are the same in both bodies serious disagreement is not likely. In effect, the Lagting is not so much a second chamber as a special committee of Parliament to which part of the process of legislation—an extra 'reading'—is entrusted. It is a device for securing sufficient discussion on legislation without the delay which would be caused if the same people

had to do all the discussing, and without risk of obstructing the clear wishes of an elected assembly.

The Norwegian constitution still provides that Bills to which the King refuses his assent can none the less be passed if two successive Parliaments approve them; but neither in Norway nor Denmark is the Royal Assent more than a formality.

Amendments to the Constitution require in Norway the approval of two successive Parliaments, with a two-thirds majority on each occasion, the Parliament for this purpose sitting as a single body. There is a further requirement that the Constitution can only be altered in detail, not in principle. It is not clear who would interpret this rule; its intention is, presumably, that Norway shall remain a democratic monarchy, as the overwhelming majority of its citizens would wish. In Denmark the consent of two successive Parliaments is required, followed by a majority vote at a referendum of the whole people.

The Judicatures

All three Constitutions provide for a Supreme Court whose judges, with appropriate prescribed qualifications, are appointed by the executive and not removable except by impeachment or, in Sweden, the adverse judgment of the Parliament. This Court is the final court of appeal from all the ordinary courts of the land, whose judges are also appointed by the executive and not removable unless found guilty of misconduct after judicial process. Sweden has a parallel Supreme Administrative Court which, with its subordinate bodies, deals with abuses of power by government officials: but this system has not been adopted by Norway or Denmark. The Supreme Courts do not appear to possess, and certainly do not exercise the power to declare laws unconstitutional. We have seen, however, that in Sweden consultation with judges of the Court, in the Law Council, is part of the process of law-making: and in Norway and Denmark the Government may seek the opinion of the Court on the legal aspects of a proposal. These prior precautions presumably make subsequent review by the Courts unnecessary.

Impeachments, should they occur, would be started by Parliament or officers appointed by it and heard by a High Court of the Realm. In Norway this Court consists of ten members of the Lagting and five judges of the Supreme Court; in Denmark of the judges of the Supreme Court and an equal number of other judges chosen by Parliament; in Sweden of various judges and persons holding high administrative and military office.

We have noticed that in each constitution the fundamental rights—freedom of speech, writing, assembly, association; freedom from arbitrary arrest, from imprisonment without being brought to trial, and from penalties not imposed by law and the courts—are briefly but adequately mentioned. In this field, the Swedish Freedom of the Press Act is especially noteworthy. It is one of the fundamental laws and provides for a wide measure of freedon of publication subject to the minimum restrictions to prevent defamation, incitements to violence, etc. In return for observing these reasonable restrictions, publishers and writers are guaranteed full access to official documents, decisions of public bodies and similar material, save for those affecting military secrets; and the relations between owners, editors and writers are prescribed in a manner likely to promote freedom of expression. An interesting feature—showing that Sweden has dealt early with a modern problem—is that special legislation may be passed concerning the circulation among young people of matter which might brutalize or deprave them. Persons charged with abusing the freedom of the press are to be tried by jury—a process otherwise rare in Scandinavia, and confined, in Norway and Denmark, to trials for the gravest offences.

General

We have seen that constitutions are often to be explained by reference to those abuses against which the nation was most strongly protesting at the time the constitution was framed. The Scandinavian peoples, particularly the Swedish, have, in the past, been concerned to avoid two evils. One was an attempt by Kings to forge the nation, by absolute rule, into a weapon to be used for foreign military adventures which ultimately proved beyond the nation's strength. The other was an attempt at domination by nobles whose interests were linked more with members of their own class in other Scandinavian countries than with their fellow-countrymen. In the early days of the Swedish Parliament the struggle between nobles and the lower estates is partially correlated with a struggle between Scandinavian unionists and Swedish nationalists. The result throughout Scandinavia has been a form of government and frame of mind which is, first, zealously patriotic without being aggressively anti-foreign or imperialist, expressing itself in devotion to the monarchy as a symbol of the nation; and, second, strongly addicted to parliamentary government. The monarchy is as firmly limited as it is deeply respected. Long before the industrial revolution the absence of serfdom had ensured the rise of a vigorous yeomanry; afterwards, the populations

were not large enough to permit the rise of so influential a class of very wealthy people as arose in Britain. These facts have given Scandinavian parliamentarism an especially democratic and leftward trend: the mass of the people have been more prepared to use their democratic rights themselves, less apt than the British to look to the leadership of an upper class, whether defined by wealth or birth.

It is not surprising, therefore, that the Social-Democratic party has for many years formed the government in Scandinavian countries, sometimes in coalition with the party representing the rural interest, but often—despite proportional representation—securing an absolute majority in the Parliaments. These governments have not pursued a fully socialist policy and have left by far the greater part of the economy in private ownership. A large proportion of those engaged in agriculture, however, own the land on which they work and organize co-operatively the marketing, and to some extent the raising, of their produce. The Co-operative movement has also made considerable inroads into industry and commerce. The whole structure of society is therefore decidedly less capitalist than that of Britain. Policies towards taxation, education and social services resemble those of the British Labour Party; the influence of the Conservative and Liberal parties is sufficient to impose some limit on equalitarian tendencies.

The composition, as well as the method of election of the Parliaments, is democratic. All social classes are represented there. The multi-member constituencies, made necessary by proportional representation, prevent the member from having the close personal relationship with his constituents that is found in Britain. This is partly counteracted by the rule that a member must live somewhere inside his constituency; and by the fact that a Scandinavian multi-member constituency often has no larger a population than a British constituency returning one member.

The homogeneous Scandinavian countries are not, like Switzerland, preoccupied by the need not to offend particular linguistic or religious groups, and this may explain why they have shown greater vigour in the development of social services and of the education not only of young people but of adults. There is probably no part of the world in which the general level of information and understanding about public affairs is so high; and this has enabled them to carry democracy further than other nations. Of the three countries Sweden is reputed to be the most aristocratic and cautious. This view is based more on a few phenomena than on a general trend

of policy. Its social structure and manners have a more aristocratic flavour; wealthy men are more numerous and prominent. Its bicameral Parliament, with the First House slowly re-elected over eight years, responds less quickly to popular opinion. This, however, can cut both ways. Recently there has been a slight trend to the right in Swedish voting; the effect has not yet made itself felt in the First House and the Social-Democrats remain more strongly entrenched there than in the Second.

Each of the three countries, once its independence was assured, has lived on cordial terms with the others; their citizens cross each other's frontiers with fewer formalities than are imposed on visitors from outside Scandinavia. In their relations with the outside world they are naturally anxious to avoid being drawn into conflicts with great powers. Yet, though pacific, they are not pacifist, and all three constitutions prescribe universal compulsory military service. They are not so firmly attached to the policy of neutrality as the Swiss; all three belong to the United Nations, as they did to the League, and many of their citizens have been distinguished servants of these bodies. In 1940 Norway and Denmark learnt sharply that neutrality and innocence do not prevent aggression; they now belong to NATO. Sweden remains uncommitted, judging, perhaps, that if she attached herself to the West her neighbour Finland would be persuaded or forced into the Eastern camp.

CHAPTER XII

Italy

Origin and Nature of the Constitution

The map of Italy presents a deceptive appearance of a country so fenced by mountains and sea that its defence and unity should be easily assured. Yet the Alps—the 'shining traitors' as the Italians have called them—never deterred a resolute invader, and the Mediterranean throughout the centuries was a highway for colonists and conquerors. Under the Roman Republic we find Italy with a Latin centre, a Graecized south and a predominantly Gallic north. In later times Spanish dynasties dominated the south while a nominal connection with the Holy Roman Empire brought the north within the orbit of German and Austrian rulers, and the Papacy struggled to keep political control of the centre. There were, however, two factors, both inherited from Rome, which gave unity to the Italian people—their language, and an attachment to the Roman Catholic religion so strong, even among those most opposed to the political claims of the Popes, that Protestantism found no foothold in the country. With Napoleon's invasion came one of the early ideas of the French Revolution, that political boundaries should be based on nature and reason rather than on old dynastic claims. To many Italians this meant that all who spoke their language should be united in one realm. Neither Napoleon nor those who defeated him welcomed this project, but the struggle for Italian unity persisted and progressively achieved its object throughout the 19th century. The struggle itself further promoted a sense of unity, welding such diverse elements as the Royal House of Sardinia and the insurgents against the tyrannical King of Naples. Many of the latter, still influenced by French Revolutionary ideas, would have preferred to found a republic, but accepted monarchy in order to win friends for the cause of unity and to make unity more acceptable to the Great Powers. Of these, Britain had been most consistently friendly to the

Italian cause and the Italians were the more ready to make trial of constitutional monarchy as a form of government.

Former division, conflict and misgovernment had left the new Kingdom a legacy of poverty which was aggravated when the United States began to restrict Italian emigration to that country. The growth of industry raised the standard of life and education in the north, but the south was still afflicted by inefficient agriculture and by the ignorance and backwardness to which former tyranny had reduced most of its people. After the first world war the inexperienced democracy, unable to handle its economic problems, fell a prey to Fascism with its promises of prosperity and glory in exchange for liberty. In consequence, Italy was dragged behind Germany's chariot into the second world war. Defeat did not destroy Italian unity; but the monarchy, which had approved and supported Fascism, was discredited. In 1946 a moderate but decisive majority voted, at a referendum, for a republic; a constituent assembly was summoned and in 1948 the present constitution came into force.

At this stage, as at the time when Italian unity was forged, there were divergent forces. Language, religion and the memory of the struggle for unity were strong enough to prevent any political division of the country. Yet there remained a wide economic and social difference between north and south. In the main the north was progressive or revolutionary and the south conservative, but there were many cross-currents of opinion. The detestation of Fascism produced in some people a resolve that the new constitution should strictly protect democratic freedoms and the rule of law. Others held that democratic forms would fail, as they had done before, unless they were used to carry out extensive changes in the social order and to promote equality and social justice. Yet others drew the conclusion that parliamentary democracy was a failure and that the only successful antidote to Fascism was Communism. There were also many who would have preferred a monarchy and now desired, at the least, to hold in check these various manifestations of anti-Fascist feeling.

From this situation emerged a constitution which, in protest against Fascism, was republican, parliamentary-democratic, respectful of the rule of law and anti-militarist. In other respects it is a compromise. The social and economic duties of the State are recognized, but private property is not to be arbitrarily invaded. The form of government is to be unitary, but the different needs and wishes of various parts of the country are to be met by a large measure of decentralization. The more conservative elements are consoled for the

disappearance of the monarchy by the recognition of the special position of the Church.

These ideas are embodied in the opening sections of the constitution, dealing with Fundamental Principles and Rights and Duties of Citizens. The combined effect of these sections is as follows:

(1) Italy is 'a democratic republic based on Labour'. Politically, citizens exercise their power through universal, direct, free and equal suffrage; they all have an equal right to hold public office and are allowed to form parties in order 'to co-operate in a democratic manner'. Any form of Fascist Party, however, is prohibited, and members of the former royal family do not enjoy political rights. Legally, all have the same status; they are protected against arbitrary arrest or search and guaranteed freedom of worship, travel, assembly and expression in speech or in publication. All accused persons have the right to be defended in the courts; retroactive legislation is prohibited and the death penalty can be imposed for military offences only. There are to be no special privileges or titles of nobility. Officials are subject to administrative law. In economic and social matters the constitution speaks of work as a right and duty of all citizens: and it is the duty of the State to see that economic and social barriers against the development of personality are removed and that earnings are proportionate to the quantity and quality of work. The State must further ensure equal pay for equal work as between men and women, and weekly rest and annual holidays with pay; it must also protect juvenile workers and make provision for industrial and professional training, and for emigration. We have here, as in the Indian Constitution, a list of objectives towards which policy ought to move rather than of rights absolutely safeguarded. Further social objectives are defined in the statements that the citizen has a right to education, social insurance, and assistance in case of need; that trade unions, provided they are registered and are democratic in structure, have a legal right to exist and to organize strikes; that co-operative enterprise, whether of consumers or producers, is to be encouraged. Private enterprise is to be subject only to such controls as will ensure that it does not operate against the public interest or against human liberty or dignity. The right of the individual to acquire property and the duty of the State to encourage saving are asserted: but this is balanced by the statement that taxation is to be progressive—i.e. is to be not only absolutely but proportionately heavier on larger incomes—and that the State has the right to acquire property in the public interest. Land-ownership is subject to special supervision, with the object of encouraging small

and moderate-sized holdings. These sections of the constitution are clearly capable of very different interpretations, according to the emphasis one lays on this or that part of every sentence. Their real meaning is that Italy rejects both Communism and extreme *laissez-faire* capitalism and leaves the electorate to decide to what extent either Welfare State or democratic Socialist policies shall be introduced.

(2) The republic, although one and indivisible, is required to protect linguistic minorities and to encourage local autonomy. A later section of the constitution, developing this theme, describes the proposed division of the country into regions with sub-division into provinces and communes. This plan envisages each region having its own constitution, legislature and executive and dealing with transport, tourism, conservation of natural resources, police, local government, hospitals. An agent of the central government would be appointed for each region to see that its use of its powers did not conflict with the constitution or with national legislation. It was expected that the regions would delegate many of their powers to provinces and communes over which they, in their turn, would exercise supervision through agents. In practice, little of this plan has been operated, partly for lack of sufficient people experienced in local government, partly through fear that some regions would fall under Communist control. The two islands, Sicily and Sardinia, have regional government and receive special grants from the central government in view of their exceptional poverty and difficult social problems. Trentino-Alto Adige and Val d'Aosta, which contain, respectively, German and French linguistic minorities, have a lesser degree of autonomy. Elsewhere, regional government has not been set up; the provinces have an apparatus of local government but under close supervision by prefects appointed by the Minister of the Interior.

(3) The Lateran Pacts made between Mussolini's government and the Vatican survived the ruin of Fascism and are now part of the Constitution. Read together with the clauses concerning religion, education and marriage they produce a situation which guarantees freedom of worship to all creeds but ensures a special position for the Roman Catholic Church. The Pope exercises temporal sovereignty over that part of Rome designated as the Vatican City, so an age-old claim of the Papacy is, at least in form, admitted. Catholic religious instruction is given in the state schools; both civil and religious marriages are equally valid in law; the Church has complete control over appointment of priests and bishops. Since 99 per cent of the population—including even those who vote Communist—

profess the Catholic faith, all parties accept this situation, though with varying degrees of enthusiasm. A balancing of Catholic and anti-clerical sentiment appears in the sections dealing with the family. In accordance with Catholic doctrine the duty of maintaining and educating children is placed first on the parents, the State having the duty to assist them, with especial regard for large families. In practice, the administration of education is highly centralized, though the communes are responsible for building elementary and nursery schools. Eight years' elementary education is stated to be free and compulsory, but in the poorer parts of the country it is by no means universal. Underlying all this section of the constitution is the conflict between those who desire to develop a welfare state and those who believe that this development may undermine parental responsibility or invade the rights of the individual. It is a conflict which appears in several Catholic countries and is not unknown elsewhere; in Italy, the limited funds available for social services make it an argument more over principles than practice.

(4) Italy's repentance of Fascism is shown in a clause which renounces war and states a willingness to agree to whatever limitations of sovereignty may be required for the promotion of international justice and peace. At the same time, military service remains a duty of citizens.

The Executive

The Head of the State is a President elected by a body consisting of both Houses of Parliament, one delegate from the Val d'Aosta and three from each of the other eighteen regions.[1] A two-thirds majority is required; but if, after three attempts, it is not obtained, a simple majority suffices. The President must be at least fifty years old; he is elected for a term of seven years, and can be re-elected. He enjoys the usual nominal powers of a Head of State—the control of armed forces, accrediting of diplomats, appointment of ministers and officials. He summons Parliament, promulgates the laws which it passes, and may dissolve either House after consultation with its President. He has only such powers of pardon as may be prescribed by law; there is no general prerogative power, such as the Queen enjoys in Britain, to reduce or cancel penalties imposed by the Courts. A special feature is his presidency of the Superior Council of the Magistrature, whose functions are described later. The power to make war or peace resides not with the President but with Parliament and all important treaties must be ratified by that body.

[1] This provision will not operate until all the regions are established.

For the performance of any of these acts the President requires the countersignature of the ministers whose departments are concerned. It is they and not he who are responsible, unless his conduct is held to justify an impeachment for high treason; this process requires a majority of all members of both Houses of Parliament at a joint session. The President himself appoints a president of the council of ministers (i.e. a Prime Minister) and, on the latter's recommendation, the other ministers. These have their several departments and are individually and collectively responsible for policy, after the usual manner of cabinet government. They need not be, but usually are, members of Parliament; if they are not, they have the right to attend and speak. Like the President, they are liable to impeachment. When a council of ministers is appointed it must, within ten days, get a vote of confidence from both Houses: if it fails, the President must find a group more acceptable to Parliament. Once a cabinet is thus confirmed in office it can only be overthrown by a direct vote of no confidence passed by one or other of the Houses. The signatures of at least one-tenth of the members of a House are required to initiate a no-confidence debate, and at least three days must elapse between their request and the debate itself. These provisions have, in the main, succeeded in their object of producing governments which are stable but in the last resort subject to Parliament.

The Government may be given, by Parliament, the power to make decrees having the force of law; but only for a limited time and specified purposes. In emergency the Government may make such decrees without prior permission: but they must be submitted to Parliament at once if it is sitting, and within five days if it is in recess and has to be specially summoned.

The Constitution provides that the civil service shall be recruited by competitive examination and shall impartially serve the nation, whatever political party is in power. With this end in view, Parliament may pass laws restricting the right of public servants to belong to political parties. It is possible, though rare, for the same person to be member of Parliament and a civil servant; the Constitution contains the significant provision that the promotion of such civil servants shall depend solely on seniority.

Three auxiliary bodies, the National Economic and Labour Council, the Council of State and the Court of Accounts, are established to advise and control the Executive. The Economic Council, composed of economic experts and representatives of organized labour and capital, advises the government on matters within its sphere, examines proposed legislation and may make its own

legislative proposals. The other two bodies have an independent status like that of a judicature. The Council of State advises on legal and administrative matters. The Court of Accounts' functions resemble those of the Public Accounts Committee and of the Comptroller and Auditor-General in Britain.

The Legislature

Parliament consists of a Senate and a Chamber of Deputies. The Senate contains about 320 members, each region returning a number proportionate to its population, save that Val d'Aosta has one senator and all other regions at least six. Senators are elected for a six-year term by direct and secret vote of all citizens over the age of twenty-five; they must themselves be over forty years of age. In addition, ex-Presidents of the Republic and five persons appointed for life by the President for social, scientific, artistic or literary distinction are members of the Senate. The Chamber of Deputies, with about 560 members, is elected in territorial constituencies on the basis of one deputy for 80,000 inhabitants. All citizens over twenty-one may vote; deputies must be over twenty-five years of age and are elected for five years. The two Houses assemble at the same time, sitting, each year, from February until the summer holiday, and again from October till Christmas. Either House can be summoned for a special session either by the President of the Republic, or by its own president, or on the demand of one-third of its members; if this occurs the other House must also meet at the same time. A House cannot reach a valid decision on any matter unless a majority of its members are present when the vote is taken; provided this condition is fulfilled a simple majority of those present can decide the issue, except when revision of the constitution is proposed.

Most of the draft laws discussed by the Italian Parliament are brought before it by the government, after consultation with one or more of the auxiliary bodies described above. Private members of either House also make frequent use of their right to propose laws. In addition, any 50,000 voters may propose a draft law, but no use has so far been made of this power. Corresponding to this right of popular initiative is the right of 500,000 voters or five regional councils (when they exist) to require a referendum on the repeal of any law passed by Parliament, except those dealing with the Budget, amnesties, or treaties. At such a referendum a majority vote would decide the issue, provided at least half the adult citizens voted. This referendum power, however, is also so far unused.

The process of legislation in the two Houses is substantially the

same. The draft law is first submitted to a committee which in due course reports it back to the House with or without amendments. The House then discusses each clause separately, making such amendments as it sees fit, and then takes a vote on the draft in its final form. If a draft law is declared urgent the whole procedure in the House may be omitted, and the committee by itself can pass the law. This special procedure cannot be used for laws affecting finance, treaties, elections, or constitutional matters, or for laws giving the government power to make decrees: nor may it be used at any time if the government, or one-tenth of the House, or one-fifth of the Committee object. The discussion of a draft law may be begun in either House, or the two Houses may discuss the same measure simultaneously. The two Houses are equal in power, and the consent of both is required to pass a law. The constitution makes no provision for disagreement. Minor conflicts are resolved by informal discussion; major conflicts are not likely to arise, since the similarity in the method of election of both Houses causes their political party complexions to be approximately the same. Once passed, a law must be promulgated by the President within a month, though Parliament may, for any particular law, prescribe a shorter period. Promulgation means that the law is published and comes into force fifteen days later, unless the law itself fixes a different date. The President may, however, return the law to Parliament before promulgating it, and ask them to reconsider it: if they then pass the law again the President has no further power of delay.

In accordance with the usual principle of parliamentary government, the Executive can only raise and spend money, each year, to the extent and in the manner prescribed by an annual law embodying the budget. The Italian budget, however, is more restricted than the British, since it cannot contain objects of expenditure or forms of taxation which have not been approved by Parliament in previous years. When new expenditures are required, separate legislation must be introduced, stating the manner in which the necessary money will be raised. Every time such a law is passed it will, of course, widen the possible scope of the budget in subsequent years. Before the budget is actually passed into law, the Executive may begin to use the powers of taxing and spending which the budget envisages; but it cannot anticipate in this fashion for more than four months.

Laws revising the constitution must be passed by each House on two occasions with an interval of not less than three months. On the first occasion it is sufficient if a majority of members are present, and

a majority of those present approve. On the second occasion, at least a majority of all members is required in each House. If a two-thirds majority is obtained, the revision is made forthwith. If the majority is less than two-thirds, there is a period of three months during which one-fifth of the members of either House, or five regional councils, or 500,000 voters may demand a referendum. If no referendum is demanded, or if, at a referendum, a majority of those voting approve the change, it is accordingly made. No change, however, may be made which could cause Italy to cease to be a Republic.

The Italian Parliament is nearly, but not quite, a sovereign body. Given a two-thirds majority it can revise the constitution by itself: the power to repeal its laws by popular referendum seems unlikely to be used; as in most countries with 'written' constitutions, its laws could be adjudged unconstitutional by the appropriate court, but this also has never yet occurred.

The Judicature

An independent judicature is recognized as essential to liberty. In Britain it was only secured after long struggles; yet even there judges and magistrates are appointed by the Executive, and the Lord Chancellor is both head of the Judicature and a member of the government of the day. It has indeed been recently suggested that this gives the political party in power a powerful weapon of patronage, since lawyers and judges must look to the Executive for promotion. Italy, like the French Fourth Republic, has pursued the concept of independence further. The appointment, promotion and disciplining of judges and magistrates is in the hands of a Superior Council of the Magistrature. The functions of the Minister of Justice are confined to initiating prosecutions and ensuring that the mere physical provision for the administration of justice is made.

The Superior Council consists, first, of the President of the Republic, and the president and the prosecutor of the Court of Cassation. Of its remaining members, two-thirds are elected by judges and magistrates, all grades of the judicature being represented, and one-third, consisting of professors of law and eminent lawyers, is elected by a joint session of Parliament. The elected members hold office for four years and cannot be immediately re-elected.

There is the usual structure of superior and inferior courts administering the ordinary law, and a parallel structure of administrative courts dealing with cases affecting public officials. The Court of Cassation hears appeals from both types of court, and determines

conflicts of jurisdiction between one court and another. The Superior Council appoints magistrates by means of competitive examination, but provision is made to bring into the higher ranks of the judicature a limited number of lawyers and professors who have not worked their way up from lower magistracies.

This provision is important. A judicature planned like the Italian, as a self-appointing, self-promoting and self-disciplining body may be exceptionally free from the danger of political influence and patronage. But it may become a narrow and self-satisfied body. A magistrate who seeks for promotion by trying to discover what views and ideas, expressed in answers to examination papers, are most likely to gain approval from his professional superiors, is not necessarily a more desirable person than an English barrister hoping to be elevated to the Bench by the action of a Prime Minister. The Italian provision for some higher appointments to be made from 'non-career' magistrates is intended as a safeguard against narrowness. It is as yet too early to say how well the whole system will work.

Judges and magistrates cannot be removed from their offices unless complaint is brought against them by the Minister of Justice and proved, after judicial hearing before the Superior Council.

There is a Constitutional Court consisting of fifteen judges who must have been previously either judges, professors of law, or lawyers with twenty years' practice. Five are appointed by the President of the Republic, five by Parliament in joint session, and five by the Superior Council. They are appointed for twelve years, retiring not all at once, but in rotation; they cannot be immediately reappointed. The Court is the final interpreter of the Constitution, and can annul laws which it judges unconstitutional. It is also the court which hears impeachments: for this purpose it would be enlarged by the addition of sixteen persons elected by Parliament and possessing the qualifications required of a Senator.

General

Austria, the Bourbons, the Papacy and Mussolini have in the past tyrannized over Italy. In consequence, some Italians have fallen into a passive acceptance of tyranny; others have reacted with a fiery championship of democracy, republicanism and individual liberty; others, more recently, have turned to Communism. Among the framers of the constitution the second group was, naturally, the most influential. They realized that to satisfy many of their most politically-minded fellow citizens they must provide abundant opportunity for expression of the popular will and substantial safeguards for individ-

ual liberty. Yet they knew that another section of the population would have no idea how to use the opportunities offered, while others would take advantage of democratic liberties to propagate a non-democratic philosophy. They performed their task with great skill. There is opportunity for popular initiative and referendum on legislation without the likelihood that either will be used to excess. Parliament in the last resort controls the government but cannot bring it down without time to reflect on the seriousness and possible consequences of so doing. Regional decentralization is partially introduced, with opportunity to extend it as more Italians become acquainted with the art of government. The whole structure is characterized by that elegance and ingenuity which Italians display in any creative work, whether it be laying out a garden, painting a picture, preparing a meal or framing a constitution.

There is an unhappy contrast between this elegance and the stark facts of poverty and illiteracy which confront the nation. In the northern cities there is a skilled working class and thriving middle class: these, and to a lesser extent the villagers of the north enjoy a standard of life which is at least comparable to that of other west-European peoples. In the south, in Sicily and in Sardinia lack of skill and overcrowding of land produce a condition more like that of south-eastern Europe or parts of Asia. The situation is aggravated by systems of land-ownership and cultivation which have persisted for centuries and still prevail in many areas. '*Latifundia perdidere Italiam*' said the Roman reformer Tiberius Gracchus in 133 BC—the great estates, owned by absentee landlords and uneconomically tilled by slave labour, to the exclusion of a free peasantry, had ruined Italy. The Italian word *latifondi* is now used to describe both the great estates of the wealthy, and large stretches of country owned by many small proprietors but farmed extensively rather than intensively—that is to say, without adequate capital or modern methods so that the yield per acre is small. This result can be produced both by the neglect of a large owner whose estate is so vast that, even badly farmed, it gives him an abundant income, and by the ignorance and poverty of the small owner.

The duty of dealing with the *latifondi* is specifically laid on the State by the Constitution. It is the main problem of Italian politics and the main factor determining the structure and policies of the parties. Largest of these are the Christian Democrats. In both houses they fall just short of a majority, and form the government with the support, but not the participation, of the small Liberal and Social Democrat groups. They desire to avoid revolution and to preserve a

stable democratic government with a moderate form of capitalism; but are aware that to do this they must, despite the opposition of the more obstinate among the wealthy, tackle land reform and establish education, social insurances and other instruments of a welfare state. They draw support from those of the upper and middle classes who are not incurably reactionary and from those sections of the urban and rural working class who either consciously reject Communism, or—whether from prudence or timidity—fear any drastic changes, or apathetically accept the leadership of the traditional educated classes. The Catholic Church has great influence in opposing Communism and promoting a cautious attitude to political change. The Christian Democrats have been careful not to make themselves an avowedly Catholic, still less a clerical, party: but contact between them and the Vatican is close and the prestige of the Church helps them politically.

Christian Democrat governments have handled the land question by creating special public corporations in the areas affected. These bodies acquire land from large owners and redistribute it; they reclaim marsh or derelict land; they provide capital and expert instruction. Further, they seek to improve the general standard of education and to enable the peasants to take more part in the management of affairs so that the present highly centralized control of the work may in time be relaxed. There will be no real stability till the peasants feel that they are themselves re-creating their countryside, rather than being guided from above. Land reform has, so far, proceeded sufficiently to avert revolution, but not far enough to give permanent assurance for the future. The Christian Democrats are hampered in the work by the suspicions of their own right wing, and by the emergence on their right of the Monarchist Party and the Italian Social Movement. These small but not insignificant groups are connected, respectively, with the old conservative and later fascist elements; they also attract those who are generally discontented and, because of their social class, hostile to Communism.

The major opposition comes from the Communists themselves, who control about one-quarter of the seats in Parliament. In theory and principle they regard as useless the attempt to deal with Italy's problems by parliamentary democracy and gradual reform; and in practice they are able to gain support for their views by showing how gradual the reform is and how much remains undone. There is some resemblance here to the situation in Russia before the Revolution. Lenin was at one time alarmed lest the timid measures of land and social reform begun, even under the Tsar Nicholas II, might give the

peasantry such a stake in the country as to preclude revolution. The Italian Government is less timid than the Tsar: we have yet to see whether it is bold enough to be successful.

This polar opposition of Christian Democrat and Communist has splintered the once powerful Italian Socialist Party. Its main body, about half the size of the Communists, is often in alliance with them but too suspicious of the Soviet Union to effect a permanent merger. A much smaller group, now called Social Democrats, usually supports the Government.

Political differences are reflected in the world of industrial labour, where three different trade union groups are linked, respectively, with the Christian Democrats, Socialists and Communists. In international affairs also the same conflicts arise. Italy's membership of NATO is naturally a point in dispute between the main parties. Immediately after the war American influence in Italy worked on the side of the Christian Democrats, and the party is still reproached by Communists as a tool of western imperialism. This taunt would have more force if the Communists themselves were not, despite some efforts at independent action, substantially influenced by Russia. Yet it would be a mistake to see either party as a mere puppet. Both are naturally attracted to one or other of the Great Powers: but their existence and policies are primarily the result of Italian social conditions.

CHAPTER XIII

The Pattern of the Democracies

ALL the States so far examined have what are usually called democratic constitutions. Among them, however, we notice that Pakistan has suspended its constitution and France has adopted a form of government whose claim to be democratic is dubious. South Africa can only be called a democracy if we regard the black population as not part of the human community, and this is so large a reservation as to invalidate the use of the word. Switzerland's claim to be a democracy requires the assumption that the women are somehow represented through the civic rights possessed by their menfolk. Ancient Athens is called a democracy on the like assumption that women and slaves were not to be counted. In the ancient Greek world, however, that assumption was universal. Athens at least extended civic rights to all free men; it may therefore, in contrast with some of its contemporaries, be called democratic in a special and limited sense. The modern world generally rejects slavery and professes a belief in sex equality: it is, therefore, a straining of language to describe as democracies modern states which exclude large sections of their people from the political rights possessed by the remainder.

Some States, though not making a major departure from democracy, retain in their constitutions some vestige of a pre-democratic order. The hereditary principle in the British House of Lords and the property qualifications for the Canadian Senate are obvious examples. It is significant, however, that the power of both these Upper Houses is in decline. Classes distinguished by birth and wealth do indeed wield influence in many democracies; but, in the main, they do this indirectly and not, as in time past, through special powers granted them in the constitution. We shall consider later how important this indirect influence is and how far it affects the claim of the countries concerned to be called democracies.

Any attempt to define the correct use of the term 'democracy'

faces a further complication. Not only do the countries traditionally called democratic—which will hereafter be described as 'the democracies'—display inconsistencies and defects; the Communist countries of the world, with a completely contrasting conception of politics, claim with equal emphasis that they are 'People's Democracies' and that the claims of other countries to this title are a deception. By derivation the word means 'power for the people'; similarly, by usage, when people claim that their country is a democracy, we understand them to say that, as far as is humanly possible, all the adult citizens have an equal opportunity to exercise political power. In a community of any size the actual work of government is necessarily carried on by a minority; and the legislature is not (save for the occasional use of referendum) the whole people, but, at most, a body in whose election the whole people have had the chance to take part. The policy decisions, great and small, which must be taken in modern government are so numerous and varied that a large proportion of them must be left by the people to elected representatives and their servants: and the uncertainty of human events often obliges elected representatives to make quick decisions which they hope will serve the interests and ultimately win the approval of the people. In practice, democracy today should mean that the people have the power to discuss policy and to determine its main lines by electing representatives; to those representatives they entrust the detailed application of principles; they control their representatives partly by continuous criticism and partly be periodic elections at which representatives and governments can be changed by the expression of the people's will and without the use of force.

That this is the objective is common ground to the democracies and the Communist countries. The former claim that they reach this objective by assuring to every citizen the right to elect and be elected, the right to express opinions, form groups and parties and conduct all manner of peaceful propaganda: and they enable him to exercise these rights in safety by the rule of law, which ensures that he cannot be injured in person or property merely because his opinions and peaceful political activity are obnoxious to the Government of the day. In Britain the *Habeas Corpus* Act, the independence of the judicature guaranteed in the Bill of Rights, and the successive Parliament Acts and Representation of the People Acts are the basic instruments of democracy; and we have seen that in all the democracies similar laws exist. From their viewpoint Communist countries must be regarded as undemocratic because they allow only one

political party to exist and treat attempts to form others as criminal. To this the Communist replies that the economic and class structure of the so-called democracies is such that the legal freedoms they guarantee will, in fact, be used mainly by the wealthier classes and individuals to restrict the freedom and rights of others. Freedom of expression, he argues, means little if most of the newspapers and instruments of propaganda are in the hands of a wealthy minority; freedom to elect a Parliament is vain if the chief positions in industry and the public services are held by members of a privileged class. In his view, the foundations of democracy must consist of rules governing the ownership of land and industry and the opportunity of the worker to get his daily bread and the amenities of civilized life. If these are assured, one party is sufficient for the expression of the popular will. Since 1917, when Communism first became a power in the world, both Communist and democrat have paid each other the compliment of accepting, at least in name, much of the other's thesis. Democratic constitutions have come to include the right to work, leisure, education and security among the fundamental rights of the individual: Communist constitutions provide for elections with secret, direct, equal and universal suffrage, and assert the independence of the judicature. Yet despite these approaches, the two forms of society start from different principles. Before examining the principles of Communism in more detail we have another task. We have to summarize what may be called the comparative anatomy of the democracies, to consider what results tend to flow from their forms of government, and to asses how fully they have earned the democratic title.

CONSTITUTIONS

(1) *Degree of flexibility*

Whenever a group of people deliberately form themselves into a State, or resolve to refashion the State in which they have been living, they need a written statement of its fundamental laws. The difference between fundamental law and the ordinary laws made in accordance with its provisions is clear from the start; and there will be a desire to protect the fundamental law from easy alteration. These facts produce a written constitution set out in a document (or, as in Sweden, several documents) distinct from the rest of the law and requiring special procedure for change. All the countries we have examined, and indeed all the States in the United Nations, except two, have at some point in their history accepted this necessity.

The exceptions are Britain and New Zealand. Britain has an unbroken constitutional history dating back to a time before constitutions were systematically thought out and drafted. New Zealand is a special case; it passed smoothly from colonial to independent status; its small size did not require the conscious creation of a federal state; it inherited a body of tradition from Britain. Yet both these countries have found it necessary to modify their constitutions from time to time; and every modification requires the writing down of the new provisions that are to be observed. Conversely, countries with written constitutions, in order to adapt themselves to new problems, build up a body of custom and case-law which supplements the written text. A constitution is in fact the set of rules governing how laws are made and how legal power is distributed in the State. If it has been in existence for more than a generation it will consist both of written law and of custom. The proportion in which these two elements are mixed is not substantially different as between the 'unwritten' British constitution and the 'written' constitutions of, say, Canada or Norway.

The formal difference between 'written' and 'unwritten' is therefore of more interest to the historian than to the political scientist. The significant questions about any constitution are 'How easily can it be changed?' and 'How strictly is it observed?'

The answers to the first question emerge as follows: (1) In Britain New Zealand and Canada, it can be changed in the same manner as the ordinary law; though in Canada there is the nominal requirement of British consent for changes affecting the language question or the maximum life of the Lower House. (2) In South Africa, India, Pakistan, Ceylon and Germany, it can be changed by the legislature provided that something more than the simple majority needed for ordinary laws is obtained. As we have seen in South Africa, this safeguard fails if the composition of the legislature is not itself part of the constitution and can be altered as easily as ordinary law. The safeguard is at its strongest in Germany where the unanimous consent of the Bundesrat is required and where the composition of that body is part of the constitution. (3) Italy and the Fourth and Fifth French Republics require either a three-fifths majority of the legislature, or a simple majority both in the legislature and at a referendum of the people. (4) The USA, Australia and Switzerland, being federations, all require some measure of consent from their component units. In the USA the will of the separate States is expressed through their legislatures, and three-quarters of them must give consent. The other two countries require a popular referendum

at which there must be a majority both as a whole and in at least half the units. India requires the consent of at least half her States for amendments of exceptional importance. The German plan is in effect, because of the composition of the Bundesrat, a requirement for the consent of the component units. (5) The Scandinavian countries work on the principle of submitting proposed changes to the people's judgment. Norway and Sweden do this by requiring the amendments to be passed in two successive Parliaments with an election intervening. The citizen does not give, therefore, an opinion solely on the proposed constitutional change but treats it as one of the several items of policy put before him by candidates at the election. Denmark has the same provision, but requires a referendum in addition. There is occasionally adopted the device of making some part of the constitution quite unalterable. In this way Germany safeguards its federation and France and Italy their republicanism. Norway has the more vague provision that the constitution can be altered in detail but not in principle. We may notice also the American provision that the representation of a State in the Senate cannot be altered without that State's consent.

When we ask how strictly constitutions are observed we find that (1) in Britain and New Zealand the constitution, being part of the ordinary law, is upheld by the courts. Since in both countries the judicature is vigorous and respected this is an effective safeguard. Further, despite the linking of Executive and Legislature in the Cabinet, Parliament is jealous of its rights and has trained itself to be quick to detect and resent unconstitutional extensions of executive power. (2) The Scandinavian countries, with their exceptional respect for Parliaments, place in their hands almost the whole task of guarding the Constitution. We have noticed the wide powers of the Constitutional Committee and of the Procurators appointed by Parliament in Sweden. This device, while preventing unconstitutional action by the Executive, does not similarly restrain the Legislature itself. That restraint is ensured by the existence of legal advisory bodies to which proposed legislation must be submitted before going to Parliament. These bodies, although judicial in composition are not part of the Judicature; while Britain entrusts her constitution to the Courts and to Parliament, the Scandinavians place their chief confidence in the latter. (3) Akin to this are the arrangements found in France and Switzerland. The Fourth and Fifth Republics rely on a Constitutional Committee, not necessarily composed of judicial persons and not part of the Judicature, which can annul laws on constitutional grounds. In Switzerland that power rests in the first

instance with the Supreme Court, but the Legislature is the final authority for interpreting the constitution and resolving disputes. (4) The remaining countries adopt the device which is simplest to comprehend. They empower the Supreme Court of the Judicature to interpret the constitution and to declare invalid any executive or legislative acts which infringe it. In most countries this power is exercised only when particular cases come before the Court; in a few, the Court can give advance opinions on proposed legislation.

We perceive from all this the importance of 'separation of powers'. Constitutions are safeguarded by playing off the Legislature against the Executive, or the Judicature against both. Legal theory prefers to entrust the task to the Judicature since the question 'what does the Constitution mean?' is basically a legal question. Countries in whose history Parliament has been closely associated with the growth of liberty tend to give Parliament an equal or even predominant share in the task.

The strictness with which constitutions are observed depends partly on the matter which they contain. Lawyers prefer those which merely establish the essential machinery of government: it is a straightforward judicial task to interpret such a document. There are, however, three reasons why the people and their representatives may want a constitution of larger scope. First, it is of the nature of a written constitution that it cannot be changed as easily as ordinary law; politicians may therefore want to include in it laws of a social or economic character which they want to protect from repeal. Second, in a federal country the only certain way of securing nation-wide uniformity on social or economic policy is to put the relevant legislation into the constitution; though this result can be obtained, with slightly less certainty, by giving the federal legislature sole powers in the relevant field. These motives explain the inclusion of many social and economic provisions in the Swiss constitution and the temporary sojourn of a clause concerning alcoholic beverages in the American. Third, the countries which have framed or reframed their constitutions since 1945 have responded to the spirit of the time by including not only statements of what the law on social and economic matters is but aspirations about what it will be or ought to be. The stronger these tendencies are, the greater the risk of evasion or disregard of the constitution. The Swiss legislature, profiting by the vague distinction between laws, decrees of universal application and decrees not so described, has become expert in doing what it and its electorate want without too strict a regard for the constitution. The American prohibition amendment was countered by the flat refusal of many citizens to obey the law. The ambitious social pro-

grammes of Italy and India may prove in time to be either a spur to endeavour or an occasion for cynicism, bringing the whole of the constitution into disrespect.

In so far as a constitution is not easily changed and is strictly observed it tends to weaken elected legislatures in comparison with the people as a whole, or even a section of the people. Requirements for referenda or exceptional majorities in the legislature make it more difficult for elected persons to lead or mould public opinion. After the first world war isolationist sentiment in America was strong enough to ensure that more than one-third, but less than one-half of the Senate was opposed to America's entry into the League of Nations. This was constitutionally sufficient to prevent that entry. Had the Constitution been less precise or the observance of it less strict, America might have entered the League; and it is probable that once the step was taken opinion in favour of it would have grown and hardened. This is one example, of several which we shall notice, of a conservative or delaying tendency in democratic, and especially in federal, constitutions.

The abundance of natural resources per head in America enables the citizen to think of his welfare as dependent largely on individual and only slightly on political action. Consequently he does not expect a great deal from the governmental machine and in these circumstances an exceptionally rigid constitution continues to work. Even so, the growing need for collective social action compels the Executive to expand in a manner which constitutional purists would not approve. In India, and Italy, the gravity of the social problems to be tackled stimulated the framing of a flexible constitution which, despite the claims of Indian States and Italian Regions, would not greatly hamper the central government.

(2) *Degree of decentralization*

The distinction between federal and unitary States is more real than that between 'written' and 'unwritten' constitutions. Federalism affects social legislation, making minor experiments easier, because they may be tried out in one of the units and, by example, sway opinion in others: yet it delays major changes for which uniform legislation throughout the country is required. It makes legislation and litigation more complicated and so tends to enhance the influence of the legal profession. Yet the pressure of the same social and economic tasks reduces the gap which separates the two types of state. In the federal group, Australia amends her constitution to secure uniform financial policy, and America begins to look for ways of en-

suring national minimum standards of education and social security. In the unitary group, Britain makes increasing provision for the separate administration of Scottish and Welsh affairs; Italy gives extensive powers to some of her Regions and hopes to extend them to others. In law there is a fundamental difference between a local authority enjoying even the widest powers by permission of a central government, and a federated unit whose rights, whatever their extent, are entrenched in a constitution. In day-to-day matters, however, the citizen wants to know how easily and how near at hand he can find someone whom he can hold responsible for the payment of his pension, the repair of the roads, the condition of the schools his children attend. A decentralized unitary State and a federal State may not, in practice, give very different answers to these questions. It would be an interesting but difficult exercise, using this criterion, to list the countries so far examined in order of decentralization. Among the federations America is probably the most and India the least decentralized; among unitary states France is highly centralized, Italy markedly less so. It is hard to go further as the pattern varies for each public service: Italian education is more centralized than English, but Sicily and Sardinia enjoy in economic policy a degree of independence not possessed by any English authority. The growth of Welfare State policies—education, health, full employment—works in both directions. Their successful operation requires both firm enforcement of national standards and a degree of enthusiastic local co-operation which cannot be obtained unless local people and local councils are given enough power to make them feel that they are doing something worth while. Consequently the trend in Britain and America, and perhaps elsewhere, is towards what might be called 'uniformity by consent'. The politicians and administrators of a federated unit know that they can stand on their constitutional rights: those of the central government in a unitary State know that they can legally compel compliance from local authorities; but both, if they are intelligent know that they must compromise if they want to serve the nation. This illustrates the extent to which modern democracy requires, for its successful working, an abundance of people with education and sense at all levels, and a general willingness among all its citizens to understand and co-operate with each other.

EXECUTIVES

(1) *The Head of State*

Democracy requires that it should be possible to send those who

wield the power of government into opposition and put others in their place. Experience shows that you cannot do this with Kings without destroying that power to personify the nation and symbolize its unity which is their chief function. A democracy, therefore, cannot have a King, or Queen, as Head of State unless it is certain that he is not also the Head of the Government and that he will act as his ministers advise. If this condition is fulfilled a people which has inherited from previous generations the institution of monarchy can preserve it without damage, and perhaps with advantage, to democracy. Democrats draw a clear distinction between the State, to which all citizens owe loyal allegiance, and the Government, which even the most loyal citizens may criticize and oppose by all peaceful means. This distinction is strikingly personified when we have a crowned Head of State, with the Head of the Government and the Leader of the Opposition equally recognized as his or her loyal servants. However a State is constructed, prestige will always attach to its Head. In international affairs he is the person to whom ambassadors present their credentials; at home many acts of government are performed in his name, and he may carry out a large volume of social duties which link him, in the public mind, with happy and auspicious occasions. Further, psychologists tell us that we all have a desire, conscious or unconscious, for a 'father-figure'—for someone whom we can look up to with respect and from whose existence we derive a feeling of security. If we make the Head of State a different person from the Head of Government, we ensure that this prestige and affection flow to the former, who stands outside political disputes; they are then not available to the Head of Government for strengthening his own position and that of his party against the Opposition. This effect will be more certain if the Head of State enjoys the magic of monarchy which no party leader can possess. Even so, it is an effect which may not be completely produced. Public opinion polls in Britain have shown that it is possible, at the same moment, for the same people to state that they are dissatisfied with the Government but satisfied with the Prime Minister; he has presumably acquired some of the characteristics of a 'father-figure'. This sentiment, however, does not appear to be of much importance when it comes to voting at a General Election.

These considerations, practical and mystical, may explain why most Republics keep the positions of Head of State and Head of Government separate. Their Presidents consequently have scarcely more power, and much less splendour, than Kings. They are frequently people who have been engaged in politics and may owe their

position to an election in which party considerations have carried weight; and this weakens their claim to represent the whole nation. Occasionally this difficulty is avoided by choosing, say, a distinguished scholar with no party ties. Yet, though lacking royal splendour, a President still serves to mark the democratic distinction between State and Government. He receives the resignations of outgoing Ministers and appoints their successors, and this emphasizes the doctrine that Ministers are servants and not masters of the State. He may, like a King, be consulted on political questions—e.g. the exact composition of a new Government; his previous political experience may enable him to display more knowledge, or perhaps more prejudice, than a King.

When we examined the Indian Presidency we noticed that Heads of State might be considered as final guardians of the constitution with not only a right but a duty to act if their Ministers appeared to be bent on unconstitutional action. It is risky for a King to act thus; if he does, he may lose, once and for all, the reputation for detachment from party politics which is essential to his position. An elected President, from whom such a degree of detachment cannot be and is not expected, may more easily act on this rather doubtful doctrine. In the final crisis of the French Fourth Republic, President Coty might have refused, despite the advice of outgoing Ministers, to call on General de Gaulle to take office; and might have justified his refusal on the ground that their advice had only been given under the threat of civil war. Was it his duty, as guardian of the constitution, to have done this? or was he constitutionally bound to accept Ministerial advice? Neither the constitution of the Fourth Republic, nor of any other Republic with a separate Head of State, gives a precise answer.

Only in the USA and in Switzerland are the offices of Head of State and Head of Government united in one person; but it seems probable that the French Fifth Republic will develop on these lines, with the President occupying, in fact, both positions and the Prime Minister clearly his subordinate in Government. From the example of these two countries it appears that though it may often be useful to democracies to separate the two positions it is not necessary to do so. The Americans, despite their quarrel with Britain, were influenced by the British example. The British King in 1780 exercised many of the functions of Head of Government and the position of the Prime Minister was less assured then than it is today. As the Canadian Senate resembles the 19th-century British House of Lords, so the American President resembles the 18th-century King. But there is

probably a more fundamental reason than this piece of history. Both the American and Swiss Republics were created by nations of self-reliant individualists to whom the concept of 'father-figure' made less than its usual appeal. So complex is the human mind that there is in all of us, at the same moment, a desire to respect some kind of father or protector, and a desire to rebel against his authority: for if the human race is to survive in a changing world, each generation must combine some willingness to learn from its experienced elders, and some readiness to strike out on its own. The circumstances surrounding the birth of the USA and Switzerland were such as to encourage the rebellious rather than the respectful tendencies. The USA was born of rebellion from Britain; the Swiss cantons had repeatedly resisted the attempts of neighbouring princes to exercise paternal authority over them. The Americans, however, have sometimes been willing to confer the attributes of a father-figure on their more distinguished Presidents: but, in so far as their loyalty to their country has a permanent symbol, it is a flag and not a person. The Swiss have travelled further from these emotional attitudes than any other nation; when we look for their combined Head of State and Head of Government we find a group of seven elder statesmen with the office of Chairman passing among them by rotation.

(2) *Ministers and Cabinets*

Immediately beneath the Head of State in name, though usually above him in power, are the Ministers, i.e., the political chiefs of the Executive. They face three tasks. They have to administer the particular departments; to co-ordinate policy as a whole; and, since policy will require money and changes in the law, they have to keep in touch with the Legislature. As to particular departments, we do not notice any fundamental differences in the pattern of Ministries, between different States. Modern life imposes substantially the same tasks on all Governments, and the creation and grouping of Ministries is a response to these tasks. Occasionally we find that an exceptional problem has produced a department such as the Australian Ministry of Repatriation which has no exact counterpart elsewhere. As Welfare State policies expand and spread from one country to another the appropriate Ministries increase in number and importance as compared with older departments such as Home and Foreign Affairs. Their growth tends to be slower in Federations where Welfare policies are often begun by the component units and later co-ordinated by the Federal Government. The impact of science on methods of warfare tends to produce compact Ministries of Defence,

bringing the separate fighting services increasingly under their control; but this effect may vary from country to country according to the degree of prestige which may attach to a particular service, as to the Royal Navy in Britain. We shall notice that in Communist States the proportion of Ministries directly concerned with the running of industry is higher than elsewhere; but in the rest of the world there has also been a marked growth of this type of Ministry in the last fifty years.

The task of co-ordinating policy is usually performed by bringing the Ministers of the more important departments together in a Cabinet or Council, which will also contain at least one member—the Prime Minister—or possibly several who have little or no departmental work. Basically, the problem is that of seeing the wood and the trees at the same time. Cabinet Ministers who are too much absorbed in their own departments lack the leisure and mental energy to study how their particular work fits into the whole economy of the country. On the other hand a Cabinet composed solely of non-specialists would be inclined to take decisions without sufficient consideration of how they would work out in practice. For this reason all Governments contain, outside the Cabinet, various grades of lesser Ministers or under-secretaries; and much of the art of being a Cabinet Minister consists in knowing how to delegate departmental matters. Sometimes the title 'Minister' is reserved for those in the Cabinet, the lower ranks of the hierarchy being called secretaries or assistants; sometimes there is a gradation of Cabinet Ministers, Ministers not in the Cabinet, under-secretaries, etc.: but this is little more than a difference of nomenclature determined by history. Sweden goes furthest in separating its Cabinet Ministers from departmental work, much of which is devolved on to the Administrative Boards; but the tendency is for the Boards to be increasingly subordinated to the Ministries so that the Swedish pattern moves nearer to that found in other countries. The USA has a quite distinct pattern. Its group of Ministers round the President is called a Cabinet but its members do not undertake that full sharing of responsibility which the term 'Cabinet' usually implies. They are responsible to the President for the running of their departments; they advise him on policy as a whole, but the responsibility for it remains with him. It is a natural consequence of this that the inescapable task of co-ordinating policy falls to the President's Executive Office. In this respect American government is more truly monarchical than any other in the democratic world. The French Fifth Republic appears inclined to follow this model; but since its

constitution possesses several undemocratic features the comparison cannot be pressed.

The need for the Executive to be in touch with the Legislature springs from the nature of democracy. The Executive of a democracy must work, not arbitrarily but according to law: if its policies require a change of the law it must seek the Legislature's consent. The Legislature of a democracy must be elected by the people; it therefore becomes not only a law-making body but also, between elections, the voice of the people entitled to criticize the Executive. Universally, the device used to enable it to perform this task is that of giving it annual control of taxation; and in many countries it is given the like control over the armed forces. The English were the first to perfect these devices, having started on the task some 700 years ago. They have been adopted elsewhere either by conscious imitation or because they are the most obvious and effective means to the desired end. But if democracy requires that the Legislature should wield these final controls, efficiency demands that the Executive should have some countervailing power. It is the Executive who perform from day to day the task of government and are therefore better equipped to know what is practicable, what a particular item of policy will cost, what the reactions of foreign governments to a given line of policy will be. They need some means of persuading or obliging the Legislature to use its powers responsibly. In Britain, in the other Commonwealth countries and in Scandinavia the Executive holds the formidable weapon of being able to dissolve the Legislature at any time. In most countries this weapon can only be used on specified occasions. In Germany, France and Italy the rules concerning votes of confidence oblige the Legislature to think more than once before thwarting the Executive on a major matter. In Switzerland the whole problem is in a special setting because of the spirit of permanent coalition and compromise which pervades Swiss politics. The Executive is elected by the Legislature and reflects the shades of opinion within it so that the two bodies easily work together. In the USA, President and Congress are separately elected by the people for fixed terms; neither can interfere with the other's term and they must get on with each other as best they may. The Executive therefore must induce the Legislature to behave responsibly by persuasion and by willingness to modify policy. The monarchical position of the President inside the Executive is balanced by this weakening of the Executive as against the Legislature.

Yet even in countries where the Executive possesses greater powers than in the USA it will wish to proceed by persuasion as much as

possible. We should remember that usually the Executive and the majority of the Legislature will belong to the same political party and can usually reach agreement if there is proper opportunity to discuss. Where, as in the Commonwealth, Ministers either must be or usually are members of the Legislature, the path is straightforward. Ministers know the temper of the House; they can tell from experience what their party supporters in the Legislature will or will not accept. Nor is the situation radically different in countries where Ministers either may not or usually are not members of the Legislature: for it is universal practice that they appear, either before the whole Legislature or its committees, to explain and defend policy. This is sometimes expressed as a right of Ministers to have access to the House and sometimes as a right of the House to demand the presence of Ministers, but the practical result is the same. Walter Bagehot in his book on the English Constitution used the expressions 'Cabinet' and 'Presidential' government to distinguish the system whereby Ministers were members of the Legislature from the system which excludes them. Modern practice suggests that this distinction is not fundamental. On Bagehot's use of terms, British government is 'Cabinet' and Swiss and American 'Presidential'; but if we look at the actual relations between Executive and Legislature, the Swiss pattern is nearer to the British than to the American. We have earlier found a more profound distinction which can be marked by these terms. British and Swiss government are 'Cabinet' in the sense that the Executive is a group of departmental heads under a chief with whom they share full responsibility. American is 'Presidential' in the sense that responsibility falls on one man.

(3) *Servants and Advisers*

The increase, both in the functions of the State and in the need of scientific and technical knowledge for the formation of policy, has obliged Governments to increase the number of their servants and advisers. Civil Services and Armed Forces require not only clerks and soldiers but scientists, statisticians and craftsmen of all kinds. In past centuries it was generally assumed that jobs in the public service would go to the friends, relatives and dependants of Ministers. This system, never defensible, became intolerable when large numbers of highly skilled public servants were required. One of the great changes in 19th-century Britain was the creation of a proper system of recruitment controlled by an independent Commission. We now see this piece of governmental machinery expressly prescribed in several Commonwealth Constitutions, while in European

States a parallel development had occurred. More recently the United States, so long addicted to the 'spoils system' has begun to limit its scope and to substitute recruitment by examination and promotion by merit. The whole question, how best to recruit and promote public servants, has developed as a distinct branch of political science. What qualities does a Civil Servant require? What kind of examination will detect those qualities in a young applicant? If promotion depends mainly on the assessment of a man's merit by his superiors, can this be prevented from degenerating into favouritism? If, to avoid that evil, promotion depends mainly on seniority, how can we prevent the frustration of the exceptionally able? At present modern States have to find the answers to these questions largely by trial and error: but they all now recognize the need for a body of public servants which is independent of politics and prepared to give equal help to Governments of all political complexions.

When the ordinary citizen comes into contact with the Government it is frequently in the person of a Civil Servant, who assesses his taxes, grants or refuses him permits, approves or rejects his plans for building a house or an office block. One of the tasks of government is to ensure that its servants, placed in positions of authority, do not injure the public either by high-handedness or by neglect. Several instruments have been devised for this purpose. Britain relies greatly on Members of Parliament to ventilate their constituents' complaints; and actual illegalities committed by public servants can be dealt with in the ordinary courts. Several European countries establish a separate hierarchy of courts to deal with cases in which public servants are involved. Sweden and Denmark exercise a general supervision by means of the Procurators and the Parliamentary Commissioner. Germany has a similar device to check abuses of power in the Armed Forces. By one means or another a modern State is usually able, if it has the will, to produce a public service which is honest and genuinely desires to serve, and not to command, the public. These qualities, however, are often produced by establishing throughout the service a definite code of behaviour and set rules of procedure. This may also engender in public servants a degree of caution which makes the whole service slow-moving and not easily adaptable to new tasks.

Governments, therefore, finding themselves required to do work needing a wide range of knowledge in the natural and social sciences, and equipped with a not-too-flexible Civil Service, increasingly create advisory bodies, through which they can consult experts in many fields who are not permanent public servants but devote some of

their time to the State in this manner. Many British Acts of Parliament require Ministers to consult with professional and scientific bodies before taking action in certain fields. In the USA there has been a great proliferation of government agencies, employing, on full- or part-time basis, many people outside the ordinary Civil Service. The French and Italian constitutions prescribe regular consultation between the Government and an Economic Council. In Sweden, prior consultation with the appropriate persons is as obligatory a part of legislation as the proceedings in Parliament itself; yet this is only a constitutional recognition of a necessity which the facts impose on Governments of all modern States.

These developments in the public service mean an increase in the influence of that section of the population which is exceptionally well-educated, well-informed or administratively competent. Feudalism meant the dominance of those who excelled in military leadership and political cunning; early capitalism put a premium on acquisitiveness and the arts of the market. The somewhat different qualities now encouraged are an improvement on their predecessors. Yet we must draw the conclusion that if modern society wants to be democratic it must set wide open the doors of educational opportunity so that those who wield increasing power can be recruited from the whole of society. It must further consider how to keep those who appear to be most fully endowed by nature with these qualities, in sympathy with the rest of the population. Failing this, we might in time produce a society in which the people did not get what they wanted but what a minority thought they ought to want.

LEGISLATURES

(1) *One House or Two?*

The bicameral system is usual, but not universal. One of its effects is to make the process of legislation slower, presumably in the hope of avoiding ill-considered or badly drafted laws. We have seen, however, that bills are the subject of much consultation before they reach the legislature; and even in one House they are repeatedly examined in general and detail. The need for care and forethought is not, therefore, a sufficient explanation of Second Chambers. We shall get a fuller answer by looking at their composition. In no country are they elected in exactly the same manner and at the same time as the First Chambers. In federations they are so composed as to give special weight to the smaller component units. In some unitary states there is a comparable arrangement whereby they are elected by the

citizens, or councillors, of regions or counties in such a manner as to give advantage to rural and thinly-populated areas. It is often required that their members should be older than those of the First Chamber; or that they should be richer, or have reached some exceptional position in life; sometimes, as in Britain, these conditions are not stated in law but prevail in fact. Everywhere, the composition of the Second Chamber changes more slowly than that of the First; its members hold office for life, or for a longer period than members of the First. Usually it is not elected in its entirety at one time, but in sections at successive dates. The effect of all these devices is to make certain types of change in the law more difficult. Elections to First Chambers are now so arranged that they give as fair a picture as any representative device can of what the majority want at the time. The effect of bicameralism is to tell the majority that if they want certain particular kinds of policy they cannot have them, unless the majority is exceptionally large, or unless the desire is manifested at more than one election, or unless the change is acceptable not only to the majority but to those groups specially represented in the Second Chamber. This arrangement could be defended if the policies so obstructed were those demanding major constitutional change; but, in all written constitutions, safeguards against such changes are provided quite apart from the Second Chamber. It can be better defended in federations, where the specially protected groups are the component units. Those units are usually a cross-section of the population so far as wealth and social class are concerned; and they may claim that this special protection was part of the bargain when they agreed to form part of the federation. Yet again, it might be defended as a method of ensuring sobriety and caution. This defence would be more valid if Second Chambers compelled the nation to have second thoughts on all major policies. In fact they are usually so constructed that the policies subjected to delay are those which are less acceptable to the older and richer sections of the community. No nation has yet devised a Second Chamber to give special protection to the younger and poorer sections[1]; in strict justice this would be as defensible a proceeding as protecting the elderly and the rich. Apart from their special function in federations we must regard Second Chambers as an aristocratic or plutocratic element surviving in democracies. They rest on the belief that a social structure agreeable to the more prudent and substantial citizens must be protected against the recklessness of the 'have-nots'. It is significant that in those

[1] But note the power of vetoing acts of government, enjoyed by the tribunes of the people in the Roman Republic.

countries—Scandinavia and New Zealand—where conflict of class-interest is least marked, bicameralism has either disappeared or survives only in an attenuated form.

(2) *Methods of Legislation*

The details of procedure in legislatures vary greatly from country to country; but underneath the surface we find everywhere two main stages in the process of making a law. One is discussion in the whole House of the main principles; the other detailed discussion and amendment by a smaller group. In Britain, these are the Second Reading and the subsequent Committee Stage; but in most other countries the order of them is reversed. When this is done the discussion in the whole House combines the functions of the British Second Reading, Report, and Third Reading—i.e. general discussion review of the Committee's work, and final approval. The order of the processes, the time given to each, and the various refinements that may be introduced, seem to depend largely on historical accident. Legislatures make wholesale revisions of procedure rarely and reluctantly—probably because each legislator fears that such revision might remove the particular procedural device which he has become expert in exploiting. Adjustments are therefore made piecemeal, to meet particular needs as they arise. If any general tendency may be observed, it is the growing importance of committees; the volume of work has so expanded that arrangements must be made for several pieces of it to be done concurrently, and the House must be increasingly willing to trust the judgment of those of its members who have specialized in each particular topic. Even the British House of Commons, so jealous of its powers, has begun to devolve the Second Readings of some Scottish and Welsh measures on to Committees. In the USA, since members of the Government cannot sit in the House and lead its discussions, the influence of Committee Chairmen is enhanced: the French suspicion of all governments produced a similar tendency in the Fourth Republic.

All nations have found it necessary to arm the Executive with some power of subordinate legislation by decree subject to final Parliamentary control. We have noticed the failure of the Fourth Republic's attempt to avoid this. The extent of this power is mainly determined by the range of government activity, e.g. the growth of welfare policies; but exceptional powers will also be given as in India, Germany, and the French Fifth Republic, when there are special reasons to fear internal disunity or external attack.

In the main, the passing of laws is done by elected representatives

and not by the people as a whole. Several countries use the device of referendum to secure the judgment of the people on constitutional changes. Switzerland alone—save for the limited provisions, never yet used, in the Italian constitution—make the whole people partners with the legislature in passing ordinary laws; even so, she often circumvents this constitutional requirement. To require popular approval, by referendum, for every important change in the law, sounds a most democratic device; and it is important to an understanding of democracy to see why it is not. A people may at an election give a verdict in favour of bigger social services, greater equality of incomes, experiments in public enterprise; or for lower taxes, unrestricted private enterprise and as much opportunity as possible to get richer than somebody else. The translation of either of these policies into legislation involves some immediately popular and some immediately unpopular laws. No Government or Legislature can hope to execute either policy if it always runs the risk that only its more obviously attractive legislation can be passed. Measures to reduce taxes are much more likely to survive a referendum than those which cut services; yet it may well be impossible to implement the former without the latter. It may be said that the people must learn to see policy as a whole and not piecemeal: but this is exactly what the device of referendum tempts them not to do. There are, moreover, few measures which promote the general public good without inflicting some loss or disappointment on particular groups. A law about housing and rents may evoke definite but mild approval from the majority and passionate resistance from particular groups of landlords and tenants; and its good effects may depend on its being joined in the same programme with legislation on industry and employment. If, at a referendum, the people are asked to judge this law in isolation the emotion of mild approval may not be sufficient to bring supporters to the poll in the same numbers as the zealous opponents. The referendum, then, tends to encourage short-sightedness and sectionalism and to make it difficult for governments to pursue any resolute course. It will be satisfactory only if we assume that the whole people are capable not only of pronouncing on a general line of policy, but of co-ordinating a legislative programme. This last, however, is an expert task which people who have to earn their livings in other ways cannot do; they therefore elect and pay legislators to do it. To take an analogy, if I want to get to a particular destination, I book a passage in the appropriate aircraft. If I do not like my destination on arrival, I can return or travel elsewhere; if the journey has been unnecessarily uncomfortable or dangerous I make

complaints and get these defects remedied. What I cannot do with safety is to give running instructions to the pilot throughout. This analogy must not be pressed too closely. Governments and legislatures may well be improved by running criticism throughout their tenure of office; but during that time they must reserve the right to decide for themselves what weight to give to this criticism. To assert that a group of elected persons is permanently, and on main issues, wiser than the whole people is to move from democracy towards party dictatorship; but to deny them, at every stage, the power of decision on particular laws, is to move towards anarchy. Democracy resolves this dilemma by giving elected persons a reasonable period of time to exercise power and put through a co-ordinated programme, and requiring them to submit the result to popular judgment at appropriate intervals.

Some of the objections here raised against the referendum apply also to such systems of 'proportional' election which promote the growth of many small parties. The purpose of a democratic election is to enable the whole people to do the job, which properly belongs to it, of determining the main line of policy for the next few years. If an elector votes for a party large enough to have a prospect of forming a majority in the legislature, he knows that the policy which it professes—and which he likes more, or dislikes less, than any other—will, in the main, be put through. If he votes for one of several parties, none of which can secure a majority, he may pick one whose policy is almost exactly to his taste, but he knows that the party can do no more than exercise a limited influence in a coalition government. As with the referendum, the voter is encouraged to take a sectional view and the legislature cannot produce a coherent policy because there is no certainty how the voting on each particular measure will go. It will be convenient to discuss some further implications at a later stage.

JUDICATURES

Although most constitutions are of recent date, legal principles and procedures have their roots deep in history. A lawyer, as such, is not primarily concerned that laws should be moral or just, but that they should at any given moment be definite. He wants clear rules that can be applied to each case that comes before the courts; he wants to avoid a situation in which a case is decided quite arbitrarily without reference to comparable cases in the past. If the law says that a nobleman who murders a commoner shall be fined, and a commoner who

murders a nobleman shall be hanged, the lawyer's first concern is to establish the precise meaning of the terms 'nobleman', 'commoner' and 'murder' and to see that the same definitions are applied in all cases. Lawyers, therefore, are much occupied with formulating general principles and agreed procedures; though, inevitably, the more powerful minds are led on from this to study the relationship of law to natural justice and the public welfare. This respect for tradition, in the legal profession, often enables the basic principles and procedures to survive political upheavals. So when old nations go through revolution or reform their constitutions they may change the content of the law, but it is still applied by a profession in whom certain habits are ingrained. A grasp of the principles of Roman law is still necessary to an understanding of many European legal systems. New nations start their life with a legal structure borrowed from elsewhere; the English common law has been transplanted to the Commonwealth and the United States.

All judicatures contain a structure of higher and lower courts with a right of appeal upwards. Countries whose tradition derives from England tend to give greater influence to laymen, appointing lay magistrates in the lower courts and making much use of juries: this may be originally due to the need for judges appointed by Norman Kings soon after the Conquest to rely on the consensus of public opinion as to what were the laws and customs of the people over whom they ruled. Continental systems rely more on the legal profession, making less use of juries and lay magistrates. Again, it is in the English tradition to have a single system of courts dealing with all cases, though the English High Court is separated into divisions each specializing in certain types of case. France has established distinct courts for commercial and industrial matters and Germany carries this principle of specialization further. We have noticed the establishment in many countries of separate courts to deal with cases involving the public service. Federations usually have both federal courts and those belonging to each unit, though the degree of separation between them varies from country to country. In India, for example, the State Courts and the Federal Supreme Court are both the creatures of the constitution: State Courts administer State and Federal law, with a right of appeal to the Supreme Court. In America the Federal Courts owe their existence to the Constitution and Acts of Congress and administer Federal law; State Courts are the creation of each State and administer State laws. Wherever separate hierarchies of courts exist some Court—e.g. a Court of Cassation will exist to determine disputes as to the proper sphere of

jurisdiction of courts. A written constitution usually requires a Court with the special task of interpreting that constitution. Finally, we have noticed the existence in most countries of a special court, usually of a political character and sometimes composed entirely of legislators, to try impeachments; but little use is made of these courts.

All free countries, whatever their legal system may be, accept the principle that the judicature must be free to decide cases according to law and evidence irrespective of the politics of the accused or the wishes of the Government; and we have noticed the special steps taken in Italy to this end. This principle is, in part, a development of the lawyer's desire for definite and unarbitrary law; and partly a product of experience, which shows that without this principle neither justice nor liberty can be established. The provisions, which we find in all constitutions, for freedom from arbitrary arrest and indefinite detention, freedom of speech, worship, etc., are only effective in so far as there are courts capable of curbing abuses of executive power. An independent judicature cannot make good law; but it is the chief instrument by which people are made sufficiently free to discuss and improve their laws, and by which the tone of political life can be made civilized and humane.

GENERAL TENDENCIES

We have now examined governments selected from all the five continents: despite differences of form we find that they share certain principles by virtue of which we call them democracies. Although at times—as during the French Revolution or at the foundation of the USA—these principles have been consciously stated, they were in the first instance hammered out in Western Europe by the conflict of classes and groups who were concerned, not primarily with principles, but with the retention or enlargement of their own power. Politics, in its primitive stage, is a struggle for power. Men cannot live in society without laws. Any group whose members are united among themselves, and distinguished from others, by race, language, or possession—or lack—of property will strive to get laws which serve its own ends. Yet groups rarely pursue their rivalries to the point of extermination, because they have need of each other. Merchant and farmer have rival interests, yet need each other's services; warlike and better-armed groups seek vassals to exploit, and vassals will accept one master as protector against another who might be more harsh. As the price of co-existence, they reduce the

struggle for power to rules which establish the means by which and the forms through which it is to be conducted. Here is the beginning of constitution-making such as England experienced when Magna Carta was sealed, or earlier, when Alfred established his Kingdom. At this stage it is no longer assumed that power is its own justification; an attempt is being made to defend a particular distribution of power by reference to the teachings of the Church, ancient custom, the general welfare—in effect, to some moral or social principle. Once the argument is on this basis, those whose share of power is slight or non-existent will begin to argue their claims on similar grounds; and economic changes will increase the power and strengthen the argument of certain groups. In particular the rise of a machine civilization will increase the numbers and improve the organization of the propertyless workers. Their demand for a share in power becomes more insistent; their rising standard of education makes it more possible for them to exercise power; and the growing production makes other classes more willing to concede what is asked. All class-conflicts become less bitter when the total of wealth to be shared among classes is increased. Once this demand is conceded, all citizens have some share in political power. Democracy as we now know it is that stage in political development in which it is accepted that all citizens should have a share—and, in theory, an equal share—in power: but in which, also, the constitutional machinery through which power is exercised still shows evidence that it was fashioned at an earlier period under the influence of aristocratic and plutocratic ideas. Moreover, as the total of wealth continues to grow, and as the business of government becomes more complicated, new tendencies inimical to an equal sharing of power may appear.

We want, therefore, to ask how strong these undemocratic tendencies, new or old, are: in fact, how democratic are the democracies? We shall particularly notice five points. *First*, all constitutions implicitly protect the distribution of property existing at the time they were framed. A constitutional assertion that no man may be arbitrarily deprived of his property protects the simple Naboth, toiling in his vineyard, from the rapacity of Ahab and Jezebel: it also protects a man who does no work in the enjoyment of a fortune inherited from an ancestor who acquired it by ruthless exploitation of labour. Later, laws made under the constitution may reduce social injustice; and the most modern constitutions express social aspirations which clearly foreshadow laws of that kind. The burden of proof, however, is always on those who want to change existing rules about property. The purpose of law is to prevent anti-social conduct;

but it acts more swiftly when such conduct invades property rights than when it is committed by property-owners. In Italy, *latifondi* cause more misery than does shoplifting; but the law moves more swiftly against the latter. In England I have a more speedy and drastic legal remedy against the thief who steals my handkerchief than against the landlord who neglects to repair my roof. This is not to say that constitutions could be framed from the start to give perfect social justice or even real equality before the law for all classes. Their purpose is to create machinery by which laws to those ends can be made; and in democratic countries the trend of legislation imposes increasing responsibilities on property-owners.

Second, the survival of Second Chambers, especially in unitary states, means that certain classes still wield political power out of proportion to their numbers. This undemocratic feature, also, tends to decrease in importance.

Third, the need for a large number of well-educated servants and advisers of the State means that a country can only be fully democratic in so far as it has made educational opportunity equally available to children of all classes. Britain, in many respects an advanced democracy, is probably the most deficient in this particular. The USA faces an urgent need to improve the quality of the free education available to her citizens; failing this her society may be increasingly dominated by the descendants of those who can afford to buy superior education.

Fourth, there is the influence of wealth on the formation of public opinion. Democracy requires an equal opportunity for all who wish to express opinions and to persuade; and democracies have, so far, tried to secure this by removing legal penalties on free speech and writing. We now find a tendency for newspapers to be owned by small groups; and that the great expense of running a newspaper makes it difficult for newcomers to enter the circle. Industrial and commercial interests influence broadcasting and television. With the intensive study of psychology, propaganda and advertising it may become increasingly possible for a few who can afford to spend heavily on controlling the means of communication to condition the minds of the rest. This strikes at a basic assumption of democracy—the right, and the capacity of a man to make up his mind for himself. The problem is the more serious because this is not a survival from the past but a new plutocratic force, recently developed. Democracies are still trying to find how to deal with this problem without destroying the important legal freedoms of expression. The Swedish Press Law is an interesting experiment in this field.

The *fifth* point is concerned with the organization of political parties. It has been apparent throughout our whole inquiry that we cannot assess the constitution of a country until we have observed the impact of parties on it. Parties are the instrument through which the wishes of individuals are forged into coherent policies. What factors determine their formation? Sometimes a group which is a linguistic or religious minority forms itself into a party to ensure the recognition of its language or the freedom of its worship; and the result may be that the majority groups, by faith or language, also express themselves as parties. This explains much of the party structure in Ceylon; in France, Germany and Italy there is some correlation of religion and party; the recent split in the Australian Labour Party is, to some extent, on religious lines. The conflicting interests of the townsman who wants cheap food and the countryman who wants good prices for his produce affect the composition of parties in the USA, Australia and several other countries; in Britain, though less than formerly, the Labour Party is associated with the town and the Conservatives with the countryside. Occasionally there have appeared parties appealing specially to older people and concerned to increase the proportion of public money spent on pensions. Above all, there is the factor of social and economic class. Those who live by owning property rather than by working tend to be conservative: for, as we have seen, the general trend of any changes made in democracies is towards restricting the rights and increasing the responsibilities of property owners. But those who live mainly by work do not form one class. There are those who work in professions and usually enjoy security of employment, adequate pensions and prospect of advancement in income and status during their working life. There are the various groups of manual and clerical workers, skilled and unskilled, whose position in these respects is inferior, to a greater or lesser degree. There are those in business, either on their own account or as managers: many of them are owners of property as well as workers, and hope, during their working lives, to move more and more into the property-owning class; some of them obtain very large incomes, but their prospects, as regards income, advancement and security vary greatly, both among themselves and by comparison with other groups in society.

Society, then, is divided into a number of different groups by several different criteria. The way in which this grouping is reflected in political parties is greatly influenced by a nation's electoral system. Take a system, like the British, so constructed as to reduce, in the legislature, the influence of the parties which have least support in the

nation, and to give to the largest party a good prospect of a decisive majority. Such a system obliges the various groups to realize that if they want any part of their own way, they must make alliances with groups nearest to them in interest. We have noticed how the form of the American Presidential election prevents the complete fragmentation of politics in the most heterogeneous nation. Take next a system, like that of the Weimar Republic in Germany, intended to give each party representation in the legislature proportionate to its voting strength in the country. Many groups are then encouraged to form themselves into distinct political parties each of which will do battle in the legislature for the group's interests. The latter system has the more democratic appearance; but it produces Governments which are uncertain of their tenure of office and consequently timid in policy. Paradoxically, its effect, like that of undemocratic Second Chambers, is to make any change more difficult. It produces situations in which everyone agrees that changes ought to be made, but the argument about the form and extent of change can be so entangled that no effective action is taken. Britain and America so arrange matters as to favour a two-party system. In the Commonwealth there is an approximation to the British system, with the 'proportional' principle admitted to a limited extent. Continental countries framing their constitutions in the 19th or 20th century tended to favour the proportional principle but have recently been inclined to modify it in such a manner as to restrict multiplicity of parties. In Europe, then, there is this further paradox. Britain, with her attachment to a long constitutional tradition, produces a system more capable of giving effect to the popular will than that of countries which formed their constitutions at a time when democratic ideas were more in fashion. There is an explanation for this. The British tradition reaches back to a time when those who engaged in politics knew, consciously or unconsciously, that its purpose was to get power and use it for ends connected with the advantage of particular classes or groups. As the British travelled from the executions of the 15th century to the elections of the 20th, they preserved the idea that 'the King's business must be carried on'—the Government must be capable of governing, or nobody would get what they wanted. The methods of the struggle for power were progressively civilized, but its vigour was preserved. If, by contrast, one starts constitution-making with less regard for the realities of government and more for exact representation of groups, one tends to produce an instrument more fitted for the discussion of politics than for their practice.

Where the electoral arrangements are such as to encourage a two-

party system, the alignment of groups is roughly as follows. The Party of the Right attracts property-owners and those whose work is rewarded by higher earnings or greater security or better prospects of advancement than the average, while the Left attracts the rest of the population usually described as 'working class'. In old countries the tendency to the Right is more pronounced in the countryside than in the towns. In newer countries, where farming looks back to a pioneering rather than a feudal past, the rural community are inclined to be 'floating voters'; in the USA and in some Commonwealth countries Farmer-Labour coalitions and alliances have often occurred. Cutting across class loyalties is the tendency of the Right to attract the cautious and the Left the adventurous; to a small extent the Right is more attractive to women and to the middle-aged, the Left to men and to the young. In countries where a large section of the population is Catholic the influence of their Church has in the past been towards the Right; this was particularly true where the Left professed not only a programme but a Marxist philosophy of an anti-religious character. More recently Catholics have been anxious to show their concern for social problems, and the Left has been inclined to stress programmes rather than philosophy; so it would not now be easy to generalize about the correlation of political and religious loyalties. In Italy and Germany the parties of the Right have a clear connection with the Catholic Church; but often the most moderate, or advanced members of those parties are zealous Catholics. In the French Fourth Republic the party (MRP) which made the most definite appeal for Catholic support occupied a middle position and drew support from many whose pure class interest might have taken them further to the Left. In Belgium and the Netherlands the electorate divides itself almost equally into Catholic, Liberal and Socialist groups, the Catholics being on most issues to the right but occasionally to the left of the Liberals.

A trend to a two-party system may appear even where the electoral laws do not positively favour it. This occurs, as in Italy and Germany, where fear either for the internal or external security of the State causes the electors to rate stability of government highly. India presents a special case. One party was mainly responsible for the emergence of the nation from dependent status, and is still regarded as the chief guardian of the State's existence; it continues, defending itself against rivals both to left and right, as a coalition of elements which, in a nation faced with fewer anxieties, would separate, possibly into a clearly defined Right and Left. Looking over the countries which we have examined we find that the usual, but

certainly not universal, pattern is one in which there are only two parties, or alliances of parties strong enough to be able to hope to form governments.

On what matters do Right and Left differ? Primarily they are engaged in the age-old struggle between 'Haves' and 'Have-nots'—or, in the more fortunate countries, between the more and less prosperous. As depicted by their enemies, the Right is concerned to preserve, in the interests of the rich, as much as it can of a social structure inherited from a feudal or capitalist past, or to keep any new opportunities for getting rich in the hands of those who are now doing well, or of their descendants; while the Left is composed of those who want, by political means, to get hold of wealth they have not been able to acquire by their individual abilities. As depicted by their friends, the Right regards inequality as a necessary condition of enterprise and wishes to mitigate the harshest results of an acquisitive society without altering its basic nature: while the Left points first to the changes required in taxation, education and property-owning before there can be even equality of opportunity, and contends secondly that society, in order to be friendly and civilized, should create as much equality of income as is consistent with leaving adequate reward for exceptional effort. Next, they argue about the way in which the economic system should develop, e.g.: How shall we ensure the development of new branches of production and the improvement of old? How shall our production be apportioned between things for present consumption and machines, etc. for improving our future standard of life? The Right rely mainly on the individual judgments of those private persons who have control over the means of production; they believe that the stimulus this gives to improvement more than outweighs the evils of short-sighted judgment and insecurity of employment which are likely to attend such a system. The Left believe that the complexity of a modern economy is such that the main decisions about its development must be taken by a public authority, leaving individual initiative to operate within a nationally planned framework. A third issue, connected with both the preceding, is the question of public or private ownership of land and industry. A society which wishes to preserve to private individuals the power of determining economic development and the opportunity to become much richer than other individuals, must ensure that most of the instruments of production are privately owned; while a society desiring greater equality and public planning must increasingly bring those instruments into public ownership. At bottom, the question in dispute is whether the competitive or the

co-operative elements, both of which are found in human nature, are to be made the main basis of society. The conflict continues because advances in natural science create new industries and advances in social science throw fresh light on the causes of and possible remedies for poverty; in this way new fields for argument are discovered. International—and, in some countries, imperial—affairs provide further fields in which each party takes a stand consistent with its basic judgments about human affairs—the Right cautious, sceptical, anxious not to destroy what is of value in the tradition of the past, the Left adventurous, hopeful, anxious not to be unprepared for the future. In Britain, for example, the instinctive Conservative reply to a demand from a colonial people for self-government is 'Why?': the instinctive Labour answer is 'Why not?'

A cynic might say that the Right always want to live in the past, and the Left in the future. Yet on both sides all save the fanatics know that mankind, though remembering the past and preparing for the future, must live and get its daily bread in the present; and that policies must be of such a kind as to keep going the social and economic machinery by which the ordinary citizen is able to live. In devising policies, therefore, each side must make some concessions to the other's point of view; and the natural wish to attract as many supporters as possible is a further stimulus to moderation. When considering, say, agriculture or housing or taxation both sides will want to put forward policies which will cause the structure of society to become either more co-operative or more individualistic; but, to have any chance of acceptance, these policies must be shown to contain some answer to the immediate anxieties of the electorate. If the present looks grave, critical or desperate the electorate may commit itself emphatically to one party or the other, believing that only a drastic course of individualist or collectivist treatment will cure its ills. At times, and in countries where a tolerable degree of comfort and a moderate optimism for the future prevails, the electorate will impose a large measure of moderation on both parties. It is part of the general ingratitude of human nature that when this situation arises people are inclined to complain that politics are no longer exciting. In the US, where the standard of life is exceptionally high, we find it hardest to draw a clear ideological line between the parties.

At present, then, in a large part of the democratic world, the pattern is of two main parties contending firmly but moderately for conflicting sets of principles which they apply consistently but cautiously to the problems of the day. We notice, however, many divergencies from this pattern, explicable in terms of the particular

circumstances of the countries concerned. We notice, further, that several countries—South Africa, Pakistan, France and, to a lesser extent, Ceylon—are making undemocratic answers to their problems: and that a number of nations, notably those of the Middle East, have adopted democratic forms which thinly cover the reality of rule by military force. We have therefore to ask what circumstances are favourable or unfavourable to the establishment or preservation of democracy. What factors induce a people, composed of groups with conflicting interests, to submit their differences to the process of free discussion and majority vote?

First, it is easier for them to do so if the standard of life is relatively high; for when the cake is larger disputes about its division are less bitter. Most of the democracies we have examined are well-off compared with the rest of mankind; but the determined efforts of India to apply democratic remedies to poverty suggest that although prosperity is a help to democracy it is not an essential condition. *Second*, the feeling of national unity and of respect for one's fellow-citizens which democracy requires is more easily obtained if the people are homogeneous in race, colour, language and religion. The difficulties of South Africa, and Ceylon illustrate this point: but the obvious contrast of Switzerland draws our attention to a *third* consideration. This is that the requisite unity may be forged by tradition; if, at some stage in its history a heterogeneous people has been impelled, say by the need of common defence, to live in unity, the habit of so doing will become ingrained. The value of federalism is that it is a method by which this process can be carried through. In France, a tradition, dating back at least to the Revolution, that differences with one's fellow-citizens ought to be conducted with ferocity, has hampered democratic development in a comparatively homogeneous nation. *Fourth*, since democracy involves a continuous co-operation between elected persons and those who elect them, it works more easily when the differences, inside the nation, in education and culture are not too wide. The difficulty in several Middle Eastern and African countries is that the small number of their citizens who are well enough educated to undertake the work of government are so widely separated in culture from those they represent: consequently they tend to regard the electorate as people to be managed rather than consulted. This feature is not unknown even in so advanced a democracy as Britain: but the British electorate is showing, more and more, that it prefers to be approached as a collection of reasonable beings more amenable to argument than to invective. A *fifth*, and last, condition is harder to define. If a nation is

to make a success of democracy its people must, in the last resort, trust in themselves and in their own judgment; they must not be so influenced, either by fear of foreign attack or by desire to assert themselves against others, that they seek a powerful protector who will make their nation dreaded by the world. The past protection of Britain by the sea and America by the oceans enabled this self-confidence to develop. Germany's humiliation after the first world war, France's after the second, and Pakistan's fears of India bred neuroses inimical to democracy. This means that the world prospects for democracy depend greatly on the capacity of mankind both to keep at peace and to convince itself that it is able to do so.

We must not conclude that countries which do not enjoy these favourable conditions will find democracy impossible: still less that they would be better advised to adopt undemocratic forms of government. Those countries in which democracy flourishes have not, in the past, had all the conditions in their favour. Scandinavia's high standard of life, for example, is as much a result of her democratic way of life as a condition favouring its survival. Nor have the democracies become fully democratic all at once. Often, at successive stages in their history, they have adopted this or that feature of democracy—making the Executive responsible to an elected Legislature, establishing the independence of Judicature, protecting the individual from arbitrary arrest, and, usually last, extending the franchise—and each step has made easier those which followed it, even though the whole process was never consciously planned from the start. The moral appears to be that it is for those capable of influencing their country's politics to seize every occasion where circumstances favour any move in the democratic direction and to use the opportunity to the full.

Historically, then, democracy is cradled in legalism—in the attempt to reduce the struggle for power to agreed rules. From this there slowly develops the virtue of gentleness, the increasing recognition of everyone's right to some share of control over the law which he obeys. At its present stage, democracy is largely concerned with showing that its legal forms and methods can be successfully applied to the solution of the social and economic problems of an industrialized world whose people want and expect a continued rise in their standard of life. Whether this can be done is the question insistently asked by the poorer nations among whom democracy is either not established or has not yet struck deep roots. It is for the older democracies, enjoying so many conditions favourable to democracy, to give an affirmative answer.

CHAPTER XIV

The Communist Approach

WE have seen democracy as a process of civilizing the struggle for power by the application of legal procedures and representative machinery to disputed questions; and that, at its present stage, its outstanding features are universal suffrage, personal freedom, freedom of discussion expressed largely in a party system, and a partial but growing tendency to buttress the citizen's legal and personal freedoms by guaranteeing to him social and economic rights. We have seen further that the process is gradual and can easily be hampered at any stage by economic, racial and other influences. In the first half of the 19th century the class conflicts created by the Industrial Revolution were so bitter, and those who held political power seemed so reluctant to share it, that an observer might well have judged impossible the steady democratization of politics and its application to economic problems which has since occurred in so many countries. It appeared at least equally likely that the pressure of working-class demands for political power and social justice would shatter the old legal and Parliamentary forms. This situation in the realm of action was reflected in the world of thought. If political science was truly to interpret politics might it not in future have to be based more on economic studies than on legal, moral or religious principles?

On many earlier occasions—in the 17th century in Britain and at the time of the American and French Revolutions—men had sought to restate the basis of politics. But at each successive new departure in political thought mankind has been, by comparison with the previous occasion, better equipped to review his history and more schooled in systematic thought. The new ideas fermenting in the 19th century were therefore formulated more thoroughly and precisely into a body of doctrine. Moreover, this formulation of ideas was well advanced before any State had begun to put them into practice: previously, the formulation of ideas had either proceeded side by side with their

practice, or—as with the American Declaration of Independence and some of Milton's writings—had been undertaken to justify and explain actions already taken. The earliest important contribution to this body of thought was *The Communist Manifesto* published by Marx and Engels in 1848, the year of many abortive attempts at revolution in Europe. It begins with the words 'A spectre is haunting Europe; the spectre of Communism'. A formidable spectre indeed: it was not only a particular ruling class which was challenged, but man's whole way of thought about politics, morals and his own past and future. Since then many other writings, chiefly those of Marx, Engels, Lenin and Stalin have extended the scope and elaborated the detail of Communist thought. The result is a body of doctrine in accordance with which the rulers of Communist States act or profess to act. We shall now examine its main elements.

First, Communism takes what philosophers call a materialistic view of the universe and of all that happens therein, including human history. That is to say, it holds that the material universe, of which we become aware through our senses, has a real existence independent of our perception of it; that the human mind, with its capacity to form ideas is simply a way in which the matter of the human body and brain behaves, those bodies and brains being themselves conditioned by the food that nourishes them and the whole environment in which they live. As wind and rain operate on the earth and change it, so human beings, themselves part of the material universe, can change their environment, e.g. by bridging a river or inventing a machine; though, unlike the wind and rain they do so consciously and for a purpose. Men, as material beings, require food and other material things in order to live; their actions and thoughts (which are the actions of their minds) are therefore primarily determined by the way in which they get their living. So one aspect of the materialist philosophy is an economic conception of history, a belief that the tangled and varied story of human activities can be made intelligible when we relate each part of it—politics, religion, arts and sciences—to the central economic problem confronting mankind. Communism is at once placed in opposition to a religious view of history, which sees man as created to fulfil a divine purpose which he can, at will, accept or reject; and to the liberal view, favoured by some English historians, which sees political development as the story of the expansion of liberty by the increasing application of the rule of law. Today many historians, while not accepting the economic conception as a dogma, agree that Marxism made an important contribution to historical thought by obliging students to pay more atten-

tion to economic facts and motives. It is now a commonplace that any adequate explanation of the Reformation must link that event with the rise of Capitalism. More fundamentally, the materialist philosophy is opposed to that of idealists who contend that material things do not exist independently of a mind and senses that perceive them, or possibly that the universe is best understood as being an idea in the mind of its Creator.

The words 'materialist' and 'idealist' are here used in their philosophic sense. There is a popular usage by which a materialist is one who cares for little beyond the size of his income and the gratification of his senses; and an idealist one who takes an optimistic view of human nature and who sets for himself a high moral standard of conduct. The two usages must not be confused. A man may hold a materialist view of the universe and live the life of an unselfish ascetic; and conversely a self-indulgent epicure may deny the independent reality of the material universe.

Pursuing the economic conception of history, Communism argues that we may distinguish successive periods by noting what was, in each, the main way in which mankind got its living—by farming land, by trading, by industry, machines, etc. In each period the class which owned the main means of production would dominate society. When new discoveries made other means of production more important power would shift to the class which owned and knew how to use the new means. A man's class is defined with reference to his relation to the means of production: he may be, e.g. a landowner, a bourgeois owning mercantile or industrial capital, or a proletarian—i.e. a man divorced from ownership of land, materials, tools or machines and obliged to live by selling his labour to those who own those means of production. The distinguishing feature of Capitalism by contrast with earlier forms of society, is that man lives less from hand to mouth. He discovers that if, instead of weaving today clothes which will be worn next month, he now makes machines which will produce clothes next year, his clothing will in the long run be more abundant. The process is more efficient but longer; and, to embark upon it, the capitalist must have accumulated a stock of food and necessaries with which to keep his workers alive while the process goes on. How is such accumulation possible? Marx points out that human labour can produce more than is needed to keep itself going. If we call the amount of food, etc. we must give to a labourer to keep him alive and working, his 'value', he will produce not only wealth of equal value, but a 'surplus value' as well. If he is a propertyless proletarian, he must starve or accept what wage the owner of land,

machines or stores of food will give him. The owner, having a store to live on, is in a strong bargaining position; he can pay labour its mere value and appropriate the surplus value for himself, using it to create further capital. Accumulation breeds accumulation, and Marx saw the great accumulations of mercantile and industrial capitalism as based on a 'primitive accumulation'—the processes of war, colonization and enclosure of commons, etc., by which a minority engrossed to themselves the ownership of land and made the rest a proletariat.

The extraction of surplus value clearly involved a conflict of interest between the proletarian and capitalist classes in which the former would forge the weapon of Trade Unionism. Nor would this be the only conflict. A man who had achieved perhaps only a moderate accumulation in the 'primitive' stage but had applied it to commerce and industry would become wealthier than a great landowner concerned only with agriculture. Industrialists would require a concentration of labour in the towns which would conflict with the feudal tying of labourers to the land of their lord. Facing his workers, the new capitalist was an oppressor; facing the old landowning aristocracy he was a revolutionary, demanding changes in law and customs and the transfer of power to a new class. Feudalism, by keeping at least sufficient order to enable land to be tilled and early accumulation to be made, had nourished within itself a force which would explode and destroy it. The French Revolution, as an outstanding example of such explosions, occupies a major place in the Communist exposition of history; it is the 'bourgeois revolution' of middle class against aristocrats.

It is then argued that Capitalism also contains within itself the seeds of its own decay. The capitalist seeks after surplus value by paying his workers as little as possible and making them produce as much as possible; then finds that their inability to buy the product produces slump. He seeks fresh markets in overseas empires and is involved in wars with rival capitalists of other nations. For the purposes of industry he must concentrate workers and even educate them; this enables them to organize against him. Capitalists already in a certain branch of production try to protect their profits by combining, excluding new competitors and restricting total production by agreements among themselves; and the result of less production, combined with new inventions and high productivity per worker, is unemployment, making the proletariat an even less satisfactory market. The growing cost and complexity of machines increases the power of the financier, who can raise large sums of money, and

drives the smaller capitalist out of business to swell the ranks of the proletariat. Capitalism, which once preached the doctrine of opportunity, more production and world-wide trade, produces concentration of ownership in fewer hands, spasmodic or shrinking production and rival empires fighting each other with tariffs or with arms. The large-scale enterprise, the monopoly, the whole industry directed by a group operating a single plan have been made necessary by the costliness of the means of production and the complexities of the whole process: but their ownership by a dwindling minority means that the masses are exposed to growing poverty and the perils of war and unemployment. The solution propounded is that the means of production should be owned by a single collective owner, the whole people, who will be at once workers and owners. A society so constructed will be at first Socialist, distributing its wealth to each according to the contribution he makes to production. Later, the human spirit will free itself from the vice implanted by Capitalism and men will no longer be so eager to get as much as they can for themselves, regardless of others; and the growth of wealth will make agreement about its distribution less intense. Society will then move from the Socialist to the Communist stage, with wealth distributed to each according to his needs. This is the meaning which Communists give to the terms 'Socialist' and 'Communist'. The reader should note that among non-Communists the words are used quite differently; a Socialist is one who uses democratic methods to achieve a form of society based on a large measure both of common ownership of means of production and of economic and social equality, but does not necessarily accept the Marxist philosophy; a Communist is one who accepts that philosophy and considers that the transformation of society must proceed by revolution and the supremacy of the Communist Party in a one-party State.

The view that each stage of society contains elements opposed to its own nature is part of a wider 'dialectical' philosophy. We should not, says the Communist, think of anything as merely existing, in a static sense; we should see it as changing into something else. In particular, when studying human society we should notice the conflict of opposing interests which will ultimately be resolved in a synthesis transcending the two opposites. Feudalism is a static society envisaging no great changes in the methods of production and assigning each individual a fixed place with rights and duties attached. This is the 'thesis'. Capitalism, the 'antithesis', is a dynamic society, seeking ever better methods of protection, acknowledging no fixed status, rights or duties for anyone but offering to each the

opportunity to acquire as much as he can. Socialism, the 'synthesis' will reconcile the dynamic quality of Capitalism with the recognition that rights are conditional on duties.

It is claimed that this dialectic approach distinguishes Communism from those forms of materialist philosophy which are 'mechanistic'. Granted, says the Communist, that human actions are largely conditioned by the material environment; yet they are not determined with the inevitability of a machine. The man who, using the materialist dialectic, understands the conflicts going on in the stage of society in which he lives, can perceive what transformation is necessary to resolve those conflicts. Faced with an industrial revolution he will not become a Luddite and try to hold the clock back by smashing machines. He will see that the true development is for the working class to prepare itself to take over the means of production. It is they who are afflicted by the contradictions of Capitalism, as the Capitalists previously were irked by the restrictions of feudalism. Therefore it is they who will erect Socialism in its place; and the individual's task is to help the working class to perceive their destiny and to work for it. This, to the Communist, is the essence of right or moral conduct. Yet if the individual is capable of deciding whether to become a machine-smasher or a trade union organizer, is it entirely true that he is conditioned by the matter of which he is made, the economic environment of his time and the material universe of which he is part? Can matter exercise choice? Has not a spiritual even a religious element crept into the argument? Communism here reaches the point that has baffled so many philosophies: if, as common sense suggests, everything that happens has a cause which made it happen, what place is there for human free will? Have I, born and brought up as I was, and finding myself in a given situation, any choice but to act as those factors cause me to act?

In practice human beings always act on the assumption that they have free will, and Communists are no exception. They make the rough-and-ready answer that I have always a limited freedom of choice. If I live in the 19th century I cannot, however hard I try, so arrange matters that the society in which I live shall remain unchanged or revert to the form it had before railways were invented. I can, however, help to determine how long the afflictions of Capitalism will last and how soon the transformation to Socialism will be made. Those who do this become the vanguard of the working class. Since their task is so vast and complex they must act as a united body and when, as so often it will, the question arises, 'In this situation, what particular course of action will most help the true development

of Society?' they must reach a collective decision binding on all of hem. At this point Communist philosophy impinges directly on political action. The disciple who has had difficulty with the dialectic and the doctrine of surplus value can grasp the idea of a united, resolute body working for the future. Right conduct is that which, in accordance with historical necessity, serves the interest of the working class; and the Communist Party is the judge of what does serve those interests.

From this springs the idea of the State directed by one infallible Party. We may remark that even if a band of men and women are resolute, and even if their main philosophy is assumed to be sound, it does not follow that their judgments on each particular issue are bound to be right. It is this insistence on the need for absolute acceptance of the Party line, and its corollary, the one-Party State, that has divided Communist from Socialist Parties throughout the world. As we shall see when we come to examine how the USSR is governed, it is the concept of the infallible Party—the most emotional and most easily understood part of Communist doctrine—which dominates and moulds society.

When we review this body of doctrine we may decide that it is wrong from the start or that it requires so many qualifications—particularly in its description of the development of Capitalism—that its conclusions cannot be accepted. We have to admit, however, that its account of the past and the present contains much that cannot be dismissed. Those classes and nations which have fared worst during the Capitalist era could readily illustrate its teachings from their own experience. To them it offers a coherent explanation of their grievances; and to this intellectual satisfaction it adds an emotional claim on their allegiance, and a conviction that since they are working with the forces of history, victory will come, if not in their lifetime then in that of their descendants. To provide millions with a philosophy, a faith and an appeal at once to class interest and individual self-sacrifice is no small achievement. We cannot understand the government of a Communist State or its attitude to the democracies unless we keep in mind the doctrine which inspires its rulers.

Entrenched in its own philosophy Communism advances the following criticisms of the ideas and values of the democracies. *First*, Parliaments, elections, etc., being conducted in a society where means of production and of influencing opinion are the property of a ruling class, must be a sham. To get a real expression of a worker's opinion he must be congregated with his fellow-workers in factory or

farm, conscious of his class interest and removed from Capitalist propaganda. From councils (Soviets is the Russian word) elected in such conditions there can be built a representative machinery capable of controlling administration in the workers' interests. At the outset of the Russian Revolution the slogan was 'All power to the Soviets'. Councils so elected chose some of their members to sit on councils with wider jurisdiction, and so by indirect election a national governing body was created. This method does meet the needs of an ill-educated electorate scattered over a vast country; they may feel unable directly to assess national policies, but they know which of their neighbours or workmates they can trust. We may note, in comparison, the reasons why American Presidential elections were intended to be indirect. The USSR, like the USA, has now abandoned indirect election, so the distinctive element which the phrase 'Soviet System' implied has gone. A 'soviet'—local, regional, or national—is elected directly in territorial constituencies, like a Parliament or a County Council. A vestige of the original conception of a body genuinely representing the workers and firmly controlling administrators, many of whom might still be members of former bourgeois or aristocratic classes, may still be seen when we observe how much executive, legislative and judicial power is concentrated in the Supreme Soviet of the Union. In like manner, the historic confidence which the common people of Sweden had in their Parliament has caused that body to possess wider powers than most legislatures.

Second, the party system whereby democracies claim to offer the people a genuine choice, is likewise declared a sham. Since political forms are an offshoot of the economic and class structure, parties are the vanguard of classes. If there is more than one party, all but one must represent classes other than, and therefore in conflict with, the working class. The party system serves therefore to give opportunities to the enemies of the working class. If by 'working class' is meant all those who do work of any kind, we have noticed in the previous chapter that it contains sections who do not always see their interests as coinciding and may want to give voice to them in different parties. If the term means industrial wage-earners it does not follow that all of these must necessarily have the same opinion on, say, the wisdom of the Soviet Government in making a pact with Hitler in 1939. A one-party system prevents them from making a choice between a Government which would, and one which would not, pursue such a policy. The Communist replies that they all *would* have the right opinion if they understood the issues: and the

Party, which does understand, will ensure that the Government does what they would want if they did understand. This argument is more intelligible if we assume an electorate seriously ill-informed and perhaps illiterate. It may be that electorates in the democracies are not as well-informed as they suppose: but it is certain that one reason why Communist propaganda has made so little headway in many democracies is that its methods and ideas are those considered appropriate among Russians in 1917.

Third, it is argued that even if an elected legislature in a democracy could genuinely represent the workers, its efforts to change the law will fail. It will have to operate through public servants the chief of whom are drawn from the upper and middle classes. This criticism has force, and we have noticed the steps which democracies have taken to try to produce a Civil Service genuinely responsive to the Government's will. We must, however, observe that in many democracies legislation certainly not in the class interest of senior Civil Servants, or top-ranking business men, has been passed and enforced.

Fourth, the democratic emphasis on legal and personal rights is held to be unreal since legal rights are worthless without an economic basis. Have I freedom to criticize my employer if he can reply by throwing me out of work? What use is freedom of opinion if I have no access to education which would enable me to form worth-while opinions? These and similar arguments have weight, but they have increasingly been accepted and acted upon by the democracies.

Fifth, the efforts to make the Judicature independent and uncorrupt are misconceived, since it must still operate in a class society. Legal procedures will be made by upper and middle class people to suit their needs. More fundamentally, the supposition that cases can be judged solely according to the law and the evidence overlooks the realities of class. The question of the guilt or innocence of the accused cannot be isolated from the social and economic factors which have made him the kind of person he is. Such considerations may lead us to some very varied conclusions. We may conclude that it is idle to assert the citizen's legal right of access to the courts and of proper defence unless we ensure that he can afford the necessary expert help. Again we may conclude that it is not enough for the Judicature to determine whether a crime has been committed and to apply penalties; it should also ask why X. is a criminal, and what social measures would reduce the incidence of crime. Many democracies, however, have already grasped these points and are acting on them. But the Communist approach may lead us to a quite different conclusion. If a

man's class determines what he does or is likely to do, how is a court in a workers' state to regard an accused whose former social position was bourgeois or aristocratic? Ought it not to start with the presumption that he is a potential enemy of the State? Further, if the Party discovers and declares where the true interests of the working class lie, does not the same presumption apply to anyone who can be shown to have opposed, at any time, the Party line? And is it not the duty of the Judicature to protect society against its enemies? At this point what started as a philosophic argument has ended in a crude justification of judicial murder of one's political opponents. We must remember that the USSR started its life in mortal peril from counter-revolutionaries in league with foreign enemies. A State in such peril may be justified in imposing restraints on certain people, not for what they have done but for what, in view of their background and opinions, they might do. Many States now democratic have done it at earlier periods; and in 1940 Britain interned Fascists and Communists. To extend this doctrine from restraint to killing is another matter. Moreover, Communism has taken a doctrine which might just be defended in emergency and made it a permanent principle of law. Its terrible effects were openly admitted when Stalin's successors disclosed the extent to which his regime had relied on judicial torture and murder.

Sixth, the Communist contends that the general democratic doctrine of liberty in the arts, sciences and personal behaviour is unprincipled and immoral. Capitalist democracy, he argues, permits the corruption of its people and particularly its youth by horror films, horror comics, and the dissemination through all media of the tawdry, the trivial and the pornographic. If the democracies take steps to prevent these abuses, the Communist replies that the principle of liberty is really applied in a selective fashion and can thus be used to prohibit what the ruling classes dislike and permit what they approve. Liberty in any society, he continues, will mean liberty to do those things which do not conflict with the interests of the ruling class: in Communist society the working class rules, and grants liberty for all activities which do not damage that class. Examination of what is or is not permitted in democracies does not support this argument. Democracy starts with the assumption that the individual ought to be free in these respects, and that restrictions should be minimal and applied only to activities which the great majority of people of all classes condemn. Communism starts with the assumption that all the adventures of the human spirit should be directed in accordance with definite principles by those who understand these

principles. Such a claim has in the past been made chiefly by religious bodies. Again we should remember that the USSR had at first to deal with a people demoralized both by past tyranny and by the shock of its overthrow. They had to fight against such evils as drunkenness, dirtiness, ill-treatment of wives and children; and this fight has left a stamp of puritan intolerance.

In the years since 1848 capitalist democracies have indeed had to face the embarrassments—slumps, wars, monopolies, class-conflict—which Marx predicted. Yet in Western Europe, the Commonwealth and the USA they have found the task less impossible than he supposed. Democratic legislation has applied itself to social problems; social services and education have mitigated class-conflict and increased equality of opportunity; largely, though not universally, imperialism has retreated and the imperial Powers have found that it was not essential to their interests to maintain colonial rule; more recently, governmental action in economic matters has shown itself capable of reducing the risk of periodic unemployment; public ownership has provided some answer to the charges of private monopoly. It may be that if the democracies are to continue to avoid disaster they must persist with policies of this kind till their economies contain so much equalitarianism and public ownership that they will have become Socialist; this is indeed the contention of the Left. Alternatively they may, as the Right believes, survive with no more than minor modifications of Capitalism. In either event they appear capable of remaining democratic, avoiding the Marxist catastrophe and the device of one-Party dictatorship.

Other parts of the world present a very different picture. Where the economy was grossly inefficient; where the democratic or parliamentary forms were so weak that they could not tackle economic evils; where poverty and inequality were most flagrant; where, as in colonial territories, inequality was made more irksome by the fact that the upper class were alien conquerors; where long tyranny or devastation by war had so impoverished a country that its people despaired of gradual remedies and felt that, in Marx's phrase 'they had nothing to lose but their chains'—in those regions Communism made its strongest appeal. We see it therefore today established in Russia, Eastern Europe and China; dominating the opposition in Italy; smouldering dangerously underground in Africa and the Middle East, where it is linked with injured national and racial pride.

If, as has been suggested before, all constitutions voice a protest, then Communist constitutions express protest against poverty and exploitation; against imperialism; and against backwardness—i.e.

lack of modern industry and the standard of life it can bring, lack of education, lack of leisure and culture in a world whose technical skill would seem capable of providing all these benefits. This last point about backwardness should be specially noticed. Communism thrives in countries where the economy is not modern enough to provide the improvements which helped to save democracy. To modernize themselves such countries need capital; if they borrow from richer countries they fear this will be but a continuance of their former dependent or colonial status. If, out of their own resources, they are rapidly to erect factories and machines, they must accept a stern discipline and restraint on their present standard of life. Communism, with its picture of a disciplined, self-denying society working under guidance for the future, has an obvious appeal; and an appeal more easily understood by an illiterate people. Democracy asks the citizen to think and judge; Communism asks him to believe and be saved.

CHAPTER XV

The Union of Soviet Socialist Republics

Origin and Nature of the Constitution

The Tsardom fell, under the strain of war, in March 1917 and was replaced by a government with democratic beliefs, under which many political parties appeared. Its decision to continue the war against Germany was unwelcome, particularly to the armed forces, and in November, 1917, the Communist Party (Bolsheviks) led the revolution which overthrew it. An assembly to draw up a constitution was elected but the Communists, finding themselves in a minority, used their influence with the armed forces to dissolve it and impose their own rule. In 1918 they produced a constitution based on the early Soviet principle of indirect election and giving special voting power to industrial workers who, in Communist theory, were the most advanced and politically conscious section of the toiling masses. This constitution was for the Russian Republic only; the other lands which formed part of the Tsarist Empire and today form part of the USSR were then battlegrounds between the Soviet Government and its enemies. A second constitution appeared in 1924, designed for a federal Union of Russia, the Ukraine, and the Caucasian and Central Asian Republics brought under Bolshevik rule. Up to this time, although the Communists ruled, other parties still existed. By 1936 these had been extinguished; dissidents and doubters within the Communist party had been expelled and silenced so that an iron discipline, under Stalin, prevailed within it. It was further claimed that the building up of public industry and the collectivizing of farms had so altered society that the social basis of the old classes hostile to the workers had been removed. Class enemies being now negligible, the franchise could be extended equally to all citizens. The constitution introduced in 1936 therefore presents a greater superficial resemblance to those of the democracies than did its predecessors. Stalin was inclined to stress this resemblance as part of his diplomatic approach

to the West in face of the threat from Nazi Germany. This constitution has been amended in many details since, but is in principle unchanged. It may be regarded as the Communist expression of what constitutional forms should be in a fully established Communist State. The constitutions of the other European Communist States resemble it very closely; though, in describing it, we shall occasionally notice certain differences of emphasis between it and its imitators.

The first, second and tenth sections set out, respectively, the social structure, the state structure, and the rights and duties of citizens; and from them we gather the basic principles of the regime. Politically, it is based on the soviet system, which today means no more than the principle, familiar to the democracies, that the people's power is exercised through elected bodies—local, regional and at all levels—chosen by direct, secret, equal and universal suffrage. Economically, it rests on the social ownership of the means of production, and the direction of economic life in accordance with a national plan. In development of this idea, property is classified as follows:

(1) Socialist property which comprises:

(*a*) State property, e.g. land, mines, banks, transport, factories, large-scale agricultural concerns, etc., together with municipal enterprises and most dwelling-houses;

(*b*) The property of co-operative societies;

(*c*) The property of collective farms; but in these each household, besides working on the collectively-owned land, has for its own use a plot of land with a house, stock, etc.

(2) The land or implements of individual peasants and craftsmen. These exist in small numbers, as self-employed people; members of their families sometimes work with them, but they may not become employers of wage-paid labour.

(3) Personal property—e.g. one's furniture, clothes, the income one has earned and one's savings from it: this is protected by law.

These arrangements make it impossible for people to live by mere ownership of property. Work is declared to be a matter of honour and duty, and there is an unacknowledged quotation from St Paul, 'He who does not work neither shall he eat'.

The concession made to household ownership of land in the collective farms should be noted. Communists and peasants have usually been at one in wanting to get rid of the landlord: after that the peasant wants to own the land himself, the Communists want collective ownership. Unless some measure of goodwill is secured

from the peasant, he will grow no more food than he needs for himself, and the towns will starve: so some compromise must be reached. The corresponding clause in the constitutions of the other Communist states is 'the land belongs to those who cultivate it'—which leaves plenty of room for peasant or collective ownership.

The rights of the worker are stated and, in accordance with Communist principle, given a social basis. The Socialist organization of society is his guarantee of work and of payment in accordance with its quantity and quality. The present constitution enunciates what Marx called the socialist principle 'to each according to his work'. At some date this will presumably be altered to embody the Communist principle 'to each according to his needs'. Rest and leisure are guaranteed by limiting working hours to eight, seven, six, or four per day according to the heaviness of the work, and by the provision of holiday centres. Maintenance in old age or periods of unfitness for work are guaranteed by social insurance, free medical service, and the provision of health resorts. Education is guaranteed by the provision of free compulsory schooling from the ages of seven to fourteen, and a scholarship system thereafter; also by technical training in farms and factories. Since the USSR is a multinational state, education must be conducted in the student's native language. The rights of women workers are secured by assuring equal pay for equal work, maternity leave on full pay, family allowances, day nurseries, etc.

All these rights and the practical guarantees are, of course, found in the Democracies. If we ask how the USSR compares with them in practice, there is much conflict of evidence. Despite the great advance of Soviet technique in some fields, production of wealth per head is lower in the USSR than in most of the countries we have examined but higher than in Asian countries and, probably, Italy. The same assessment is probably true of the general level of social services; and it may be that the proportion of total wealth devoted to social services is as high in the USSR as in all but a few of the democracies. As compared with the democracies, the USSR devotes more attention to social services aiding the young and those of working age, and less to those which benefit the old. Soviet education has in fact advanced beyond the minimum prescribed in the constitution, but the provisions for workers' leisure are more generous in law than in fact; revolution, industrialization and war have obliged the Soviet Government to impose a severe labour discipline. The standard of life and social services varies a good deal as between the towns of European Russia and the remote regions of Central Asia or the Arctic.

The USSR's problems must indeed be compared, not with those of a country like Britain, but with those which would arise if Britain and all her colonial possessions formed a continuous stretch of territory and had to be governed as one State. Communist doctrine about nationality is not always easy to follow. It is clear that working-class people of all nationalities have the same interests, and it is therefore wrong for any one national group in the USSR to try to pursue its interests at the expense of another. On the other hand differences of language are a material fact, not to be ignored. A Communist must be an internationalist, expounding the community of interest which unites workers of different nations, not a 'cosmopolitan' pretending that nations are all the same. Theory apart, the Soviet Government decided early in its life that, for its own safety, it could not allow the smaller nations of the old Tsardom to become independent and perhaps allied with capitalist countries; but it hoped to win their loyalty by showing more regard for national feeling than the Tsars had done. A politician in the USSR is always in danger of falling into heresy on the 'nationality question'.

The constitution requires that citizens of all races and nationalities shall enjoy equal rights in every respect and that any infringement of this principle shall be punished. It further declares that the USSR is a federal Union of fifteen Union Republics, which have the right to secede if they wish. Of these Russia, containing two-thirds of the Union's population, is the largest, and the Ukraine next in size. There are five small Republics on the western frontier, three small Republics in the Caucasus, and five large in area but thinly populated in Central Asia. Several Union Republics contain within themselves Autonomous Republics, Autonomous Regions or National Areas with varying degrees of self-government; all are divided for local government into regions, districts, etc. Union Republics frame their own constitutions, but in conformity with the principles of the USSR constitution. They have their own military formations and may have diplomatic and treaty relationships with foreign powers. The Ukraine and Byelorussia are members of the United Nations but in practice this only means extra votes for the USSR. However, the direction of USSR foreign policy, questions of war and peace, the direction of all armed forces and the security of the State are expressly declared to be within the jurisdiction of the Union and not of the Republics. We cannot therefore attach importance to the nominal right of secession or separate diplomatic activity. Likewise reserved to the Union are all major economic matters, i.e. the economic plan and the consolidated Union budget out of which

grants are made to the Republics; all enterprises of all-Union scope; money, credit, insurance and foreign trade; the basic principles of land tenure; and the preparation of a uniform system of statistics. The importance of this last item is that in a country where the economy is not run by private persons seeking to make profit, it is necessary to keep careful account of the land, labour, etc., used by any particular branch of production; by this means one may judge how the total of resources is being used, and whether a diversion of resources from, say, clothing to furniture, might not better serve the national need.

In the social field, the Union controls the basic principles of education, health, labour legislation, marriage and family laws, judicial procedure and the criminal code. The administration of these matters is in the hands of the Republics. Finally, any matters not mentioned in the foregoing list belong to the Republics. The Republics have the 'residual power': but the residue does not appear to be large.

Yugoslavia is also, and perhaps more genuinely, a federation. The Serbian Republic does not, in comparison with the other five, occupy the same predominant position as Russia in the USSR. Rumania and Bulgaria, being ethically homogeneous, are unitary States. Czechoslovakia is also unitary, but we find there a Slovak National Council with power over local government, education and minor economic matters.

The personal freedoms so emphasized in the democracies appear also in the Soviet constitution with appropriate guarantees. Freedom of conscience is to be ensured by separating Church and State and allowing freedom of worship, and of anti-religious propaganda in which the State vigorously engages. All Communist States discourage religious worship without forbidding it; they have not weaned their peoples from it. Rumania expressly permits private education for the training of priests and Yugoslavia provides free schools, though under State supervision, for this purpose. This is probably due to a need to conciliate religious bodies. Anti-religious propaganda is suggested by the Czechoslovak provision that education must be in conformity with the discoveries of science.

The USSR Constitution asserts that the citizen's home and privacy are inviolable and that he may not be arrested save by order of a court or with the sanction of a judicial officer. The right of asylum is guaranteed to foreigners who have been persecuted for defending the interests of the workers, for struggling for national

freedom, or for scientific activities. A number of people from colonial territories have in fact gone to Russia, sometimes returning after being trained in Communist theory and tactics.

Freedom of speech, publication, assembly, etc. are guaranteed by 'placing paper, printing-presses, the streets, etc. at the disposal of the working people and their organizations'. The organizations in which they may unite and enjoy these facilities are defined as those existing for trade union, co-operative, youth, sport, defence, cultural, technical and scientific purposes: further 'the most active and politically conscious of the working-people' may unite in 'the Communist Party of the Soviet Union which is the vanguard of the working-people'. This clause is more significant than all the rest of the constitution, and the whole must be interpreted in the light of it. Its implication, rigorously enforced in practice, is that no other Party may exist and that no loyal and reasonable citizen would want any other. Further, the Party is not open to all citizens but to those considered (by the Party) to be most fit. All the constitutional forms described in this chapter are operated by a self-recruiting oligarchy with a monopoly of power.

Milder, but still effective variants of this clause, appear in other Communist constitutions. Yugoslavia makes it illegal to use civic rights 'to change or undermine the constitutional order for anti-democratic purposes'. Rumania permits organizations provided they are not 'fascist, anti-democratic or contrary to the constitution'; the phraseology in Bulgaria and Czechoslovakia is similar. In some of these countries, as earlier in the USSR, other parties do exist, though at the pleasure of the Communists. Yet all this is not entirely humbug. These countries have in the recent past seen their own fascists use democratic forms to subvert the State, and later fallen under Nazi rule. Moreover, Western Germany, dreading both its own Nazis and the USSR, has a similar provision; and several other democracies require that their political parties shall be democratic. In the democracies, however, parties with quite different programmes exist, but all save Communists and Fascists genuinely observe the rule that if they become the Government they will not suppress their rivals. Those who are willing to tolerate can claim to be tolerated themselves; and most democracies go further and tolerate Communists as well. A democracy cannot consistently prohibit a party which accepts this principle of toleration, however unpopular its policies may be: but a democracy is not bound in principle to tolerate parties which reject toleration. Communist Parties in power will not tolerate, except as shadows, any other party whether it believes in toleration

or not. From this essential difference spring all the other contrasts between Communism and Democracy.

The Supreme Soviet

This body consists of two Houses, both elected at the same time for a four-year term. The Soviet of the Union numbers about 750 members elected by single-member territorial constituencies each containing some 300,000 inhabitants. The Soviet of Nationalities is made up of twenty-five members from each Union Republic, eleven from each Autonomous Republic, five from each Autonomous Region and one from each National Area, the total being about 630. We have here the usual federal device of giving extra weight, in one House, to the smaller units. Sittings of the two Houses begin and end simultaneously; they are held twice a year and usually last about a fortnight. At the first meeting after an election the two Houses, sitting together, elect an executive Committee, called the Praesidium, consisting of a President, sixteen Vice-Presidents, a Secretary, and fifteen other members.[1] The President is, for formal diplomatic purposes, the Head of the State; but the whole Praesidium can properly be considered as a collective Head of State, such as we find in Switzerland. The Praesidium is ultimately accountable to the Supreme Soviet; but whereas that body is only briefly in session, the Praesidium meets continually like a Cabinet, and continues in being during an election of the Supreme Soviet; after an election it must convene the newly-elected Supreme Soviet within three months so that a new Praesidium may be chosen. When the Supreme Soviet is not sitting the Praesidium exercises the powers of both a Head of State and of a sovereign legislature. It issues decrees, within the framework of the laws passed by the Supreme Soviet, and is the authority competent to interpret those laws. It convenes the ordinary sessions of the Supreme Soviet and calls extraordinary sessions either at its own wish or on demand of any Union Republic; this last provision has not yet been operated. It may conduct referenda on any matter, and must do so at the request of any Union Republic. These referenda, if they were held, would, like the Swedish, be only methods of ascertaining opinion. It concludes treaties, controls the armed forces, decides questions of war and peace or declaration of martial law, and is responsible for the security of the State. It may confer honours and pardons. It does not directly administer Govern-

[1] Concerning all bodies, whether the Supreme Soviet or a meeting of members of a collective farm, Soviet nomenclature uses the terms 'plenum' meaning the whole body, and 'praesidium' meaning its executive committee.

ment Departments; this is the task of the Council of Ministers, whose members are appointed by the Supreme Soviet. The Praesidium, however, may and does make changes in the composition of the Council, between sittings of the Supreme Soviet. It may also annul any decisions of the Council which it considers illegal, and it has the same power over the ministerial Councils of any Union Republic.

So far as anything in the Soviet structure resembles, in power and functions, the British Parliament, it is the Praesidium rather than the Supreme Soviet. The latter is really a delegate conference electing a body which is both a legislature and a supervisory organ over the Executive. Delegates to the Supreme Soviet are not full-time politicians: it is considered important that they should continue their ordinary jobs, and so keep in touch with the people. Being delegates, they may be recalled and replaced if their constituents think them unsatisfactory, and this has been known to happen. People of both sexes, many nationalities and many different occupations sit in the Supreme Soviet, but there is a high proportion of managerial and professional men.

When the Supreme Soviet does meet it approves the annual budget and passes laws. Decrees of the Praesidium and laws of the Supreme Soviet are both equally enforced by the Courts and no definite principle appears by which we may distinguish the fields of these two types of legislation. Laws are comparatively few, and appear to be made when the Praesidium or Council of Ministers find it desirable to reduce the principles on which they have been acting to a definite code. Both the budget and proposals for laws are introduced in both Houses by Ministers, who may or may not be members of the Supreme Soviet. Each House appoints yearly a few Committees—e.g. on the Budget, on legislation, on foreign affairs, which hold advance discussions with Ministers on matters to be presented to the House. For this purpose the Committees from each House sometimes sit together and examine both the Minister and his officials: it is possible that this stage in legislation will grow in importance. Committee members usually lead the debate in the House, but this is brief: we must compare it with the action of a delegate conference of a British trade union or political party discussing the report of its executive Committee, save that the Government's proposals are never rejected. Each member is mainly concerned with how the budget or proposed law will affect his particular constituency. It may be that by studying the tone of the debate and noting not only which members speak, but which are silent, the Ministers are able to form some idea of the reactions to their policy.

The powers of the two Houses are equal, and decisions require a simple majority in both, or a two-thirds majority in both if it is proposed to amend the Constitution. If they should disagree they would first appoint a joint committee to seek a compromise and then reconsider the question in the light of its report. If the disagreement were to persist, the Praesidium would dissolve both Houses and hold new elections. These provisions have never yet been used, because all proposals have received the unanimous assent of both Houses.

To understand this unanimity we must look at the conduct of elections. Citizens qualify for the vote at the age of eighteen and can be candidates for the Supreme Soviet at the age of twenty-three. In each area commissions are set up, composed of representatives of organizations of the kind in which the constitution permits citizens to unite. A commission may contain members from a youth club, various trade unions, a learned society, a co-operative society, etc.—and, of course, from the Communist Party. The commission's first duty, which it performs meticulously, is to prepare an accurate electoral roll of citizens and to ensure that whatever they are doing on polling-day—even if they are travelling on long-distance trains—facilities to vote are provided. All the organizations described above may also put forward candidates and the commission must see that these are properly qualified. It then, by discussion among its members, decides which candidates are the most suitable; it may hold meetings of citizens in each electoral district in its area to decide which candidate is best suited to each district. The end of this process is to provide each electoral district with one candidate whose name appears on the ballot-paper. The courses of action open to the citizen are these: (i) to vote for the candidate by putting the paper in the ballot box unmarked; (ii) to vote against him by striking his name off the paper, which is then put in the box; (iii) to invalidate his paper by putting other kinds of mark on it; (iv) to stay at home and not vote. Throughout the campaign Government and Communist Party emphasize the duty of pursuing course (i), and the overwhelming majority of citizens—perhaps as low as 95 per cent, but usually 98 per cent or 99 per cent—do this.

The electing, therefore, is really done by the organizations represented on the commission. One of these is the Party, and in all the others Party members are active and vigilant, to ensure that persons or factions hostile to the Party do not raise their head. By no means all, or even a majority, of candidates will be Party members; for the theory is that the Party is collaborating with other organizations to choose 'the bloc of Party and non-Party candidates'.

Notice that the latter are non-Party, not in any sense anti-Party: they are citizens who have not chosen to take on themselves, or have not been considered fit for, the exceptional responsibilities of Party membership.

There is clearly no real choice between policies in this process, and some writers consider it to be a complete sham designed only to give foreigners the impression that the USSR is a democracy. It is doubtful whether the rulers of the country would go to so much trouble for this sole purpose; or that they imagine foreigners to be so easily deceived. We may perhaps discern three functions for these elections. First, they are a very cautious test of how far the public is acquiescent or resentful. The good Party worker will see that the result on polling-day is satisfactory; but he will note variations in the ease with which this result is obtained. Did it take him a little longer this time than last to induce his fellow-members of the commission to agree with him? Were some of them, who were enthusiastic last time, slow or silent on this occasion? Was the final percentage 97 per cent as compared with last election's 99.1 per cent? What were the particular causes of these discontents? What persons are there whose lack of enthusiasm suggests that they require special watching? Second, though there is no choice of policies there is some choice of persons. A man who displays exceptional qualities of leadership, ability and judgment, whether in a football club, a co-operative society, etc., is one likely to be suggested as a candidate in the first instance, and the Party will be on the watch for people of this type to see if they can usefully and safely be brought into the Party. When we consider the elections not only of the Supreme Soviet, but of Republic, regional, district, city and village soviets we may conclude that the process of choosing candidates may help to ensure that policy is administered by the more competent rather than the less. There is always the risk that the successful will be those who most skilfully curry favour with local party leaders: and instances of local 'rackets' are sometimes exposed. Third, elections are an advertisement. The citizen is emphatically told that the Government is his Government; and if this is no more true than some commercial advertisements are in other countries it may still have effect on the mind. At the very least, the citizen will learn on polling-day the names of some of the people engaged in local and national affairs.

The pattern, then, is that a disciplined election produces an all-Union delegate conference which elects a Praesidium enjoying legislative and higher executive powers and supervising the departments of government. The same pattern is found in the Union Republics and

the smaller sub-units of the USSR. Nor is it substantially different in the smaller Communist countries. Bulgaria, Rumania and Czechoslovakia have unicameral National Assemblies. In Czechoslovakia the outward forms more closely resemble those of the democracies; it is the only country now Communist which has previously experienced genuine democracy. There is a President, elected by the National Assembly, who appoints Ministers responsible to that body. Elections are complicated by the fact that some other parties are still allowed to exist on sufferance.

The Administrative Structure

The Council of Ministers consists of a Chairman, whom we may call the Prime Minister, several Vice-Chairmen, the Chairman of the State Planning Commission, the Chairman of the Arts Committee, and Ministers whose number and functions can be, and frequently are, varied. The mention of the Arts Committee shows the importance which a Communist State attaches to control of culture: the Planning Commission we shall consider later. Collectively this body acts as a cabinet with power to override the departmental decisions of any of its members. Within the framework of the laws of the Supreme Soviet and the decrees of the Praesidium it may issue decisions on all matters which the constitution states to be within the sphere of the Union and not of the Republics; and these decisions are binding throughout the USSR. Individually, Ministers are in charge of Ministries which are designated as either All-Union or Union-Republican. In the main, All-Union Ministries are concerned with heavy industry, the control of which is thus centralized and brought directly under the hand of a Minister of the USSR. Union-Republican Ministries comprise those concerned with (1) light industry and the production of food, clothes, etc.; (2) social matters such as higher education and public health; (3) political matters—internal affairs, state security, justice, armed forces, foreign affairs. In these Ministries the Minister's task is to keep in touch with the corresponding Minister in each Union Republic. He will administer directly only such part of the work as is expressly assigned to him by the Praesidium; the rest is delegated, under his supervision, to the Ministries of the Republics. The reader will remember a somewhat similar arrangement in Western Germany. The inclusion of important political Ministries in the decentralized Union-Republican group is at first surprising. We must not suppose that this opens the door to variations of policy: for the Party is as dominant in the Republics as at the centre. But take, for example, the Ministry of

Internal Affairs and State Security, which contains the secret police. Efficiency in its work depends on intimate knowledge of persons throughout the country, and this compels decentralization. There may also be the consideration that an All-Union Minister directly controlling state security throughout the country would become too powerful for his colleagues to feel safe. As a rough general rule we may say that All-Union Ministries work where the main emphasis is on things—coal, oil, machinery—and Union-Republican where the main emphasis is on persons.

Since the Council administers, directly or indirectly, almost the whole economy of the USSR, it is a body of sixty to seventy people, not strictly comparable with the Cabinets of other countries. In background and qualifications, many Ministers resemble the chairmen of the boards of nationalized industries, or the heads of great private concerns rather than Cabinet Ministers. A group more like a Cabinet is found if we put together the Chairman and Vice-Chairmen of the Council and the more prominent members of the Praesidium. These are politicians more than administrators, concerned more with general policy than departmental affairs. A number of them will belong both to the Praesidium and the Council, and, almost certainly, all will be Party members. Non-Party men get elected to the Supreme Soviet but are unlikely to go further. The Party will decide what members of the Supreme Soviet are elected to the Praesidium, what persons are made Ministers and how all the posts are assigned. Some important Party members enter neither the Praesidium nor the Council, but, through their position in the Party, exercise influence over both. Stalin, for part of his period of power, held no office but that of General Secretary of the Party. The two categories—leading politician and departmental administrator—are by no means clearly distinct. Some who have travelled far up in the Soviet political hierarchy began their careers as able administrators of some branch of industry. Conversely, leading statesmen who fall out of favour with their more powerful colleagues may receive the comparatively mild treatment of being put in charge of industrial enterprises in the more remote parts of the country.

Before considering how a Minister does his work we should notice the framework erected by the State Planning Commission. This body prepares the Five-Year (or, by virtue of a recent decision, Seven-Year) Plans, collecting from almost every productive unit—farm, factory, co-operative, etc.—estimates of what increase of production it hopes to achieve in the next planning period, and the facts on which is bases those estimates. The information is channelled up-

wards through the Ministries responsible for each industry, being checked and co-ordinated at each stage. The Planning Commission then prepares its overall plan and submits it to the Central Committee of the Party. After further discussion and alteration the Plan, as approved by the Party, is submitted for formal approval by the Supreme Soviet. The process is an economic counterpart of the elections. The factory workers who nominally announce what they believe their factory can do, and subsequently pledge themselves to fulfil the plan, do not really decide policy. Yet, as at the elections, they are brought into contact with high policy and the hopes and intentions of the Government are advertised to them.

The Planning Commission does its work in continuous touch with the Ministry of Finance, whose budget contains the financial measures necessary to the execution of the Plan. We cannot clearly distinguish, in the Soviet budget, the running of the whole economy from purely governmental finance. Money must of course be found to pay for such inescapable functions of government as armed forces, education, health, police, etc. Some of it is raised by direct taxation, some by various forms of purchase tax. Some, however, comes from taxes levied on the publicly owned enterprises according to their volume of business, and such taxes may affect the price at which the products of these enterprises are sold. The Soviet State, like a medieval English King, does not rely wholly on taxation in the ordinary sense: it owns vast properties, from the successful operation of which it draws revenue.

Between them, the Planning Commission, the Finance Ministry and the Central Committee must make decisions about the prices of commodities and the wages paid for all the different kinds of work. Bearing in mind the constitutional rule that work should be paid for according to its quantity and quality, an effort must be made to assess the relative 'quality'—i.e. importance to the nation's progress at the particular time—of the work of miners, steel-workers, teachers, actors, etc., and to provide for piecework payments wherever this is possible. In these discussions the central organizations of the trade unions will play a part. In each particular factory, however, negotiations between management and unions appear to be concerned more with conditions of work and provision of amenities than with wages. Trade unionism is universal and—again like the elections—serves to keep the worker informed of policy and urge him to work for its success. One of the uses of honours in the Soviet Union is to reward outstandingly zealous and efficient workers.

Within the whole Plan are the plans for each year, and many

special plans, for shorter or longer periods, related to particular areas or industries.

We may now look at the individual Minister and his subordinates, running a nation-wide industry. Immediately under him his deputy Ministers and senior officials form an advisory committee which occasionally appeals to the Council against the Minister's decisions. Below this the Ministry is divided into sections corresponding to the various parts of the USSR in which it operates and to the various branches of the industry; there will be other sections with general duties—finance, law, etc.—and among these is a special section concerned with the political reliability of all those in the Ministry. It is part of a Minister's duties to recruit and train his own Civil Service; but a Civil Service Commission prescribes the numbers he may employ and the various ranks into which they are to be arranged. Inspectors appointed by the Planning Commission, and by the appropriate section of the Central Committee of the Party note the progress he is making in the fulfilment of the Plan. Many of the enterprises for which he is responsible must in the course of their work raise loans from the banks run by the Ministry of Finance; this gives that Ministry a further instrument of control. He is also in touch with the judicature. One of the duties of the courts is to determine disputes between Ministries: and the public procurators (i.e. prosecutors) may be required to start proceedings against persons suspected of grave negligence or sabotage.

If the reader feels that such a complicated structure cannot work he should reflect that the arrangements, whether private enterprise or Communist, for providing 220,000,000 people with food, clothing, etc., cannot be other than complex and difficult of description. The special feature of the Soviet system is not its complexity—which is a function of modern industrial life—but the elaborate arrangements for everyone to keep watch on everyone else. An undemocratic government must exercise constant vigilance over its subjects: and if, like the USSR, it suspects, rightly or wrongly, that foreign countries are trying to destroy it from within, it must redouble that vigilance. Further the USSR is still engaged on its first industrial revolution, on the success of which its standard of life, its military power and perhaps its existence depend. It is still in process of driving its population to accept the disciplines of industry; if machines are broken it cannot be sure whether to ascribe the damage to the inefficiency of the inexperienced or the sabotage of the unwilling. When Britain was passing through a similar period the Government employed people to spy on its citizens and stood ready to meet unrest with armed force.

This constant vigilance may defeat its own ends. When so many people are watching each other they may decide, for their common safety, to overlook each other's shortcomings. Easy-going *coteries* of this kind are from time to time unmasked, and the special zeal of Party members and of the officials of the Ministry of Internal Affairs prevents a universal lapse into inefficiency. Further, the general public are positively encouraged to voice complaints of inefficiency. To say in public that the plan approved by the Party is wrong because it devotes too much attention to investment and too little to producing goods for immediate consumption is disloyal; to say that the local factory manager is not doing his best to fulfil his part of the plan may be praiseworthy.

In concluding this section on the Executive of the USSR we should note the position of the Armed Forces. The Communists, dreading attack from foreign enemies, were resolved that the armed forces should be large and efficient: at the same time they must not be capable of challenging the authority of the Party. In its early years the USSR had to rely, for efficiency, either on officers of the old Tsarist Army, or on foreign, mainly German, advisers who could not be fully trusted. By now, the Soviet regime has built up its own officer corps. High pay, extensive privileges, long and thorough training and a diligent search for talent to be encouraged and promoted have produced a most efficient body. At one time, a measure to provide special education for the sons of officers suggested that a hereditary military caste might arise: but this tendency does not appear to have persisted. Volunteer regular NCOs and privates are also well paid but strictly disciplined; together with the officers they are the framework into which the vast numbers brought in by universal conscription can be fitted. But the more efficient the forces become and the greater the pride of the professional soldier in his job, the more imperative it is to secure loyalty. The armed forces, like every civilian enterprise in the USSR, contain the agents of the Ministry of Internal Affairs, but there is a limit to the extent to which a soldier can be kept efficient and loyal by being spied upon. More important is the special attention which the Party pays to organization within the forces. Soldiers, sailors and airmen of all ranks are encouraged to join the Party. Those who show military ability will be more thoroughly indoctrinated; those who seem averse to Party doctrine may find themselves moved into non-fighting arms of the service. In every unit, and in the higher organizations, there is an officer, a picked Party member, in charge of political, educational and welfare work. At some periods in the past this officer has practically shared

the command of the unit with the ordinary commanding officer; but there are obvious difficulties about such division of responsibility. His present more restricted scope is none the less important. He can ensure that the troops receive systematic political instruction as part of their training, and that their amusements and recreations are permeated with propaganda. The reaction may be enthusiasm, boredom, or, frequently that complete impassivity which soldiers of all nations usually accord to any kind of propaganda. Yet it is also a characteristic of armed forces that they reverence tradition; once any idea or institution has been accepted as part of their way of life, respect for it becomes automatic, and is not the less profound because the soldier himself does not realize how much it has become part of his nature. The whole of Party work in the forces is supervised by a body drawn both from the Central Committee of the Party and from the Ministry of Defence.

The Judicature

The Supreme Court of the USSR is elected by the Supreme Soviet for a term of five years. Comparable courts are found in each of the Union Republics and in each of the larger local government regions, elected for five years by the Soviet of the area they serve. The judges of these courts are professional lawyers but they usually sit with lay assessors to help them. This accords with the principle that courts must take into account the social and economic background of disputes and crimes. Lower in the hierarchy are the People's Courts, which may be compared in jurisdiction with the Magistrate's Courts of other countries. These magistrates, who may be lawyers or laymen, are elected, after the usual manner of Soviet elections, by the citizens of the district. There is a right of appeal, in all but the most minor matters, from People's Courts to the higher bodies, but this right does not usually extend beyond the Supreme Court of a Republic. The Supreme Court of the USSR has a power of supervision over all other Courts, to ensure that they are properly composed and proceed according to law. It does not appear to have the power of interpreting the Constitution and deciding on the constitutionality of laws. If that power resides anywhere in the USSR, it is with the Praesidium of the Supreme Soviet.

The Supreme Soviet may also establish Special Courts, and this has been done for the trial of important political offenders. Similarly, in England from the 14th to the 17th century, people of great influence might be proceeded against by impeachment or by trial before special

courts more under the influence of the Government than was the rest of the judicature.

The task of instituting public prosecutions is entrusted to the Procurator-General of the USSR appointed by the Supreme Soviet for a term of seven years. He appoints the Procurators of each Union Republic and of their larger sub-divisions; Republic Procurators appoint, with his approval, the procurators of smaller districts and towns. The whole work is thus centralized under all-Union control; everyone engaged in it is subject to the Procurator-General and not to any local, regional or Republican authority. The Procurator-General is required to ensure the strict observance of the law by everyone—private citizens, officials and ministries.

The quality of Soviet justice varies enormously. In dealing with civil cases and ordinary crimes it is usually competent and fair though sometimes rough-and-ready in remote districts. The constitution requires that trials shall be public and conducted in the language of the area with provision for interpreters if necessary; the accused is provided with proper defence facilities. Soviet Courts have often shown a real interest in the reformative treatment of criminals. Offences against public property, however, are treated with grim severity; as were offences against private property in Britain 150 years ago. We find quite a different picture when we look at the treatment of people accused of offences against the State. On this topic the reader is referred to the comments in the previous chapter on the Communist view of justice. The volume of evidence concerning forced confessions, judicial murder, 'liquidation' of whole sections of the population, and the enslavement and ill-treatment of the convicted is now as great and as decisive as that which branded the Nazi regime. Moreover, it is of the essence of the Communist system that any attempt, even by the most peaceful means, to criticize or rouse opinion against the declared policy of the Party, or to form groups within the Party to advocate any line of policy, is criminal.

The Party and the Future

At every stage in this description of the Soviet form of government it has been necessary to mention the Party; for without this a formal description would be totally misleading. In every organization and elected body, large or small, political, industrial, cultural or of whatever nature there will be the nucleus of Party members. They meet together, in advance of any meeting of a body to which they belong, and determine what policy is to be pressed, what arguments advanced,

what persons proposed for election. We know, even in democratic countries, how effective such action can be. A small united group that knows its own mind can often get its own way in a large meeting, even against the better judgment of most of those present, if no clear alternative policy is pressed by an equally resolute faction. Where, as in the USSR, it is known that the group have the power of the State behind them, their victory cannot be in doubt. The Party is the cement which holds together the Republics of the Union, the power which causes trade unions and management to unite in fulfilling the economic plan and ensures unity of purpose between the Supreme Soviet, the Praesidium, the Council of Ministers and all other organs of government.

At present the Party probably contains six or seven million adult members. They are organized, first, into groups according to their place of work—factory, farm, ministry, unit of the armed forces, etc. It is these groups who recruit members; they have to try to draw the exceptionally able, diligent and vigorous into the Party, but at the same time to make the most careful scrutiny of the former life of any proposed new members. At some periods there has been pressure to increase the size of the Party, at others to reduce members by combing out the slack and the unreliable. The groups are brought together into territorial organizations, corresponding to the structure of local and regional government, till the whole is combined in the Communist Party of each Union Republic, except the Russian Republic, and finally in the Communist Party of the Soviet Union. The regional Party organizations in the Russian Republic are thus included in the CPSU without the intervening stage of an organization at Republic level, which, in view of the size of Russia, would be an unnecessary duplication of much of CPSU organization.

The basic groups of the Party in the factories, etc., are governed by the whole body of their members; but unless they are quite small they will have elected executive committees into whose hands much of the direction of affairs will pass. The larger organizations are governed by a congress of delegates from the groups which they contain. These Congresses, like the Supreme Soviet, delegate much of their power to an elected praesidium. There is applied, throughout, the principle that a higher body (e.g. the Congress of a Republic Party) can take decisions which are binding on those below (e.g. regional and local parties): but, conversely, that all bodies must be created by election from below and that those elected must report back to the bodies which elected them. This is described as 'democratic centralism', but the main emphasis in fact is on the latter word.

For, as the organization rises to its higher levels, an increased number of full-time officials is required. There are possibly some 200,000 of these in all, and we find that a high proportion of the delegates to the congresses of higher organizations are drawn from this class. People of this kind, able to devote their whole time to Party work, and in constant touch with those immediately above them in the hierarchy, are able to wield great influence over the bodies of which they are nominally the servants. We saw how Party members could exercise the power of a united clique in any assembly containing both Party and non-Party citizens; in the same way officials tend to dominate inside the Party. The pyramid reaches its apex in the Congress of the CPSU. It is supposed to meet every four years, its powers meanwhile being exercised by its Central Committee and the offshoots of that body. In fact, it meets at irregular intervals when the Central Committee summons it: this indicates the way in which power tends to move upwards.

Before examining how the Central Committee functions we should notice the existence, side by side with the Party, of organizations for young people. Nearly all children between the ages of nine and fifteen are brought into the Pioneers. If we imagine a Scout and Guide organization made virtually compulsory and charged, in addition to the functions those organizations perform in Britain, with the duty of accustoming its members to Communist ideas, we have some picture of the Pioneers. At the age of fourteen young people may enter the Komsomols. They may remain in that organization till they are nearly thirty, and many of the older Komsomols are also members of the adult Party. Helping and directing the Komsomols is, indeed, a duty assigned to some Party members. The structure of the Komsomol organization follows that of the Party, and is under Party supervision at each stage. While membership of the Pioneers is universal, possibly one-third or one-quarter of the relevant age-group belong to the Komsomols, while Party members make up about one-twentieth of the adult population. The combined structure of Pioneers, Komsomols and Party thus serves two purposes. It encourages the whole population, in early youth, to accept the ideas of the Communist State and to understand the obligations of citizenship; and it progressively selects the most apt and reliable for the task of leadership and government. One is reminded of the guardians of Plato's Republic, examining the children of citizens whose nature was of base metal, to find whether a nature of precious metal was hidden beneath the dull exterior.

The Central Committee of the Congress of the CPSU contains

over 100 members. It elects from its own number a Control Committee which keeps watch over all the subordinate organizations of the Party, in accordance with the principle that higher bodies have authority over lower. It likewise elects a Praesidium and the senior officials of a Secretariat. It will be remembered that the Central Committee has to approve the country's economic plan and, generally, to decide the policies which are put through the machinery of the Supreme Soviet and the Council of Ministers. For this work it must have very full information which the Secretariat must assemble and arrange. The Secretariat consequently grows in size and is divided into departments which parallel those of the nominal Government. Its senior members, and particularly the First Secretary, are in a better position than anyone else to know what is going on in every sphere, and their advice must carry great weight with the Praesidium and the Central Committee. Ambitious people in the middle ranks of the Party will know that the way to get on is to enjoy the approval of the First Secretary; and he will be in a strong position to advance his favourites. The Praesidium is nominally the more important body; the First Secretary will be a member of it, and its other members will usually be leading members of the Council of Ministers. Both Praesidium and Secretariat are creatures of the Central Committee; but the Secretariat exercises exceptional power. Within the whole population, the Party dominates; within the Party, the full-time officials; among them, the Head of the Secretariat. A system which started on the principle of a self-recruiting oligarchy ends as a near-monarchy. After Stalin's death it was stated that 'collective leadership' was to be the rule, but already Mr Krushchev has outstripped his rivals. So far, however, he has not received—nor perhaps sought—the adulation and honorific titles—'Leader of Nations', 'Our Sun', 'Our Strength'—which were accorded to Stalin.

There are possible competitors with the Secretariat for supreme power. One is the Minister of Internal Affairs who controls the secret police; he will usually be a member of the Praesidium of the Central Committee of the CPSU. His colleagues are aware that he has records of every indiscreet remark they have made, and of every occasion on which they have advocated policies not finally approved by a majority of the Central Committee; and these records may at any time be the basis of criminal charges. Fear, therefore, will attract supporters to this individual; but he is not likely to be popular. If a sufficient number of his colleagues can form an effective *bloc* against him before he realizes it and disposes of them one by one, he will himself be in great danger. When Stalin died,

Beria, who held this position, was a possible candidate for supreme power. Once he failed to get it he was soon charged with treason and executed. Another competitor might appear if any one Army commander could get sufficient of the Armed Forces behind him. Beria's deposition was not secured with a display of armed force in the capital; the army commanders probably shared the general dislike of the secret police and were prepared to co-operate with Krushchev, Malenkov and others against Beria. So far, however, the Party's thorough penetration of the armed forces has prevented any one commander from rallying enough support to make an independent bid for power.

So, when all is said, the Soviet form of government is a tyranny. Oligarchies rise within oligarchies up to the supreme figure at the top. The 5 per cent of the population who join the Party probably resemble, in temperament, that minority of people in all countries who take exceptional part in public affairs, whose motives are sometimes real devotion to the community, sometimes personal ambition, often a mixture of both. Some of them will be content with a lowly or moderate position in the Party where they can serve their people and use their talents. Some will raise their eyes higher and get caught up in a life-long competition in which the prizes go to those pre-eminent in a combination of the following qualities: technical or administrative ability; tenacity of purpose; capacity for intrigue; ruthlessness.

When the ruling group have to choose between conflicting policies they do so by themselves and in private. The question at issue is never submitted to the judgment of the whole Party membership still less to that of the people. If the ruling group are selfless and efficient there may be government *for* the people; there is never government *by* the people. This principle of guardianship by a devoted vanguard over a people whose unfettered and untutored judgment cannot be trusted is not new; it is the principle on which imperial powers justify Colonial rule, and on which, in parts of Africa, white minorities dominate coloured majorities. A good case can be made for it, on two conditions: (1) that it can be clearly shown that the majority are so inferior to the minority in knowledge and capacity that, left to themselves, they would run into worse evils than being subject to an oligarchy; (2) that the minority in power are doing their best to remedy this inferiority and enable their fellow-countrymen to take their share of power and responsibility. If the rulers of the USSR advanced this justification it would be hard, remembering the past condition of the Russian people, to refute

them; though one might ask whether forty years' tutelage ought not to have produced a people capable of governing themselves. But they do not produce this argument, nor do they claim, as in the early days of the USSR, that the oligarchy—the 'dictatorship of the proletariat'—is a necessary prelude to democracy. They claim that this period is past, and that what now exists is democracy itself. We cannot therefore expect that the oligarchy will, of its own motion, develop towards democracy: it is part of the doctrine that this task is already complete.

Yet we must not suppose that the whole people are consciously groaning under tyranny and would throw it off at the first opportunity. They have never experienced democracy. Most of them go about their personal affairs, not seeking Party membership and its attendant dangers. They accept Party propaganda, and the knowledge that there are some things better not talked about, as a normal part of human life. Those who remember the Tsardom or have heard their parents speak of it, realize that the standard of life has risen and that opportunity for education and personal advancement is wider. If rule by terror sometimes selects its victims from all classes, that was also true of the Tsardom; but it is those who occupy some position above the rest who have most to fear. Moreover, the military successes of the Soviet Government have made it feared abroad; and this is, in all countries, a way of winning support. As Hitler became the terror of Europe, his own subjects admired him more: and democratic governments have been known to increase their popularity at home by military adventures which were condemned by civilized opinion abroad. Nor, even if the will to rebel were present, are modern tyrannies easily overthrown. Modern means of communication and propaganda, and the general rise in the efficiency and thoroughness of government have made possible either a Welfare State or a more effective regimenting of opinion.

Nevertheless we cannot absolutely exclude the possibility that at some future date democracy will emerge in the USSR. Hardly anyone in England in the reign of Queen Elizabeth I would have expected or wished the country to become a democracy; yet the origins of the present English system can be traced back to events happening at that time, or earlier. Such a development in the USSR would be a change in human affairs and in thought as vast as the Reformation or the French Revolution; and like those movements, even if it appeared to be sudden, the factors leading to it would have been of long and slow growth.

It may be, for example, that the smouldering discontent in the

satellite nations will give rise to such disputes on foreign policy within the Soviet oligarchy that the conflicting parties will openly appeal for popular support. It may be that a need to keep in touch with scientific work in other countries will make the Soviet intelligentsia increasingly aware of what other countries are like and more inclined to criticize their own. Again, the smaller Asian national groups in the USSR may look increasingly to China as their leader; and if rival Soviet and Chinese oligarchies are bidding for their support, either may make an offer of greater freedom. If, for these or any other reasons, belief in Party infallibility is shaken and open argument on major issues begins, some contesting group may try to put life into the cold forms of Soviet elections. The Estates-General, or Parliament, of the old French monarchy appeared to be no more than a shadow; yet it served as the first instrument through which the forces of the Revolution expressed themselves.

In the 1920s disputes within the Party were often public, till Stalin imposed his rule. Even today some information about them is available. Three main questions torment the Party: the right attitude to foreign powers; the correct balance of the economy between investment and consumption goods; the fixing of prices of agricultural produce at such a level as to keep both peasant and industrial worker tolerably satisfied. New scientific discoveries, industrial or military, may make one or all of these questions so acute and so difficult of answer that the Party splits into irreconcilable groups. The influence of technical change on political forms is the most valid part of Marxist teaching; and Communist States are not immune from its implications.

CHAPTER XVI

Conclusion

IN the first chapter we suggested three purposes which the study of forms of government may serve. The survey now completed will, it is hoped, have achieved two of them—will have given the reader some insight into the political behaviour of other nations, and some standards by which he may judge the efficiency of his own country's institutions. The third purpose was more ambitious. After observing what governments and peoples do, and the reasons they give for their actions, can we say what ends political activity ought to serve? Are there universal standards by which we may compare not only the efficiency of government in pursuing certain ends, but the worthiness of those ends themselves?

When Sir Thomas More asked himself this question in the 16th century, he returned the bitter answer that he could see nothing in the governments of mankind but conspiracies of the rich against the poor. We must reject this answer today not only because it is too harsh but because it is an over-simplification. In modern states it is not always the very richest who are the most powerful. We can usually discern a group enjoying larger incomes than most of their fellow-citizens and using that advantage to equip themselves and their children to be capable of holding the most influential positions. It is the combination of this advantage with more than average ambition which enables such a group to exercise a power disproportionate to its size. The members of the group, though to some extent in competition with each other, have a strong common interest in preventing any radical change in the distribution of wealth and power. In Communist countries we locate this group in the senior ranks of Party officials, and they secure their position by the direct use of Party power. In the democracies before the war, this group comprised the more energetic members of the wealthy and upper-middle classes. It was through their influence as members and

advisers of the Executive, and as controllers of the Press and advertising media, that they sought to persuade a democratic electorate to give its continued approval. In Scandinavia and Australasia it is now difficult to identify this group, and power has become more diffused. Indeed, the pattern varies from one democracy to the next, and in all of them it is changing.

Where the ruling class—to use a simple term for a complex phenomenon—prevails, can it truly be said to conspire against the rest? Its members can, and do, contend that the continuance of their power and privileges is not merely an advantage to them but a condition of the continued prosperity, or even existence, of the nation. Such is their skill and experience that it pays the nation well to pay them well. In the democracies they can make the further claim that they have persuaded their fellow-countrymen to accept this view. Their technique of persuasion may sometimes be that of confusing rather than enlightening the electorate: but at least, in accordance with the democratic rule, it is persuasion and not terror that they have used. In those democracies where the influence of wealth is greatest it is possible to find members of the ruling class who maintain, quite cynically, that when all is said and done about democracy, they and their kind will manage to stay on top. By many others, however, it will be sincerely held and rationally argued that an electorate in a genuine democracy can, of its free will and with enlightened judgment of its own interest, uphold a system of society in which a large measure of inequality—even hereditary inequality—persists.

The existence in many countries of a ruling class, whether it be self-recruiting Party or partially hereditary bourgeoisie, does not therefore prove that forms of government are a façade to hide a conspiracy. The operation of democratic—or, in Communist countries, electoral—methods by a ruling class may be the form of government which much of mankind now accepts as consonant with its needs. But recent experience in the democracies shows that democratic methods can be used, though slowly, to dissolve the class element in society. Let us notice clearly the point at issue. In any conceivable society there must be, at any given moment, some people who occupy positions of exceptional power and responsibility in the political and economic fields. Have they got there by winning, through character and ability, the respect or affection of a free people, capable of judging persons and policies? Does their advancement owe as little as is humanly possible to hereditary advantage, favouritism or intrigue? Are they subject, at reasonable intervals, to

re-assessment by the people they serve, so that their power may be transferred to others if this seems a wise course? Are the rewards they receive so regulated, and is their way of life such that they remain in sympathy and on terms of mutual understanding with their fellow-citizens? While they enjoy their work, are they animated by the belief that its ultimate justification is not their pleasure but the public welfare? Do they wish to increase the extent to which citizens and workers understand policies and help to operate them, or do they like to treat the management of a nation, a city or an industry as a skilled mystery in which the uninitiated can have no part? Does their fellow-citizenship with those who bear lesser responsibilities mean more to them than any community of interest between those who hold positions of power?

In so far as the answers to these questions are negative, we may properly say that a ruling class dominates society. If, as time goes by, we are increasingly able to answer these questions with the word 'Yes', then democracy is growing to its full stature. Human frailty is always with us to prevent completely affirmative answers at every point. The task of democracy is, first, to devise laws and constitutional safeguards which will make the negative answers less likely; then, by the resolute maintenance and vigorous use of these devices, to establish, as part of society's standard of values, the belief that the affirmative answers are the ones that ought to be given. In this way, habit can be enlisted on the side of virtue. Human frailty is something which politics must recognize but to which it must never surrender. It is an elementary fallacy in politics to suppose that because justice, freedom and fraternity are not perfectly attainable in this world it is therefore idle to strive towards them. The converse is the truth. There is in human nature much that is savage and tends towards injustice: it is for this very reason that we need to frame laws and institutions which will discourage that tendency and point us in a better direction.

We are now beginning to discover something about the purpose of politics. Man is not so well equipped with teeth, claws and other natural armament that he can live safely as a solitary creature. To survive, he must play his strong suits—his brain and his capacity for co-operation. In order to live, he must live in society. This involves a measure of discipline, of authority, of willingness by some to accept instructions given by others. All too easily this can be perverted into tyranny. The first purpose of the art and science of politics is to combat that perversion and to civilize the use of power.

We shall carry our discoveries further if we look again at the

attitude of ruling classes. We may, if we like, take a more pessimistic view than that suggested above. We may conclude that progress towards real democracy is slight, both in the Communist 'People's Democracies' and in the rest, and that in the main the ruling classes run affairs in their own interest, using such forms as they find convenient. But we have not thereby defined the purpose of politics. In another field, we may find that today scientific research is largely used for military ends, but we cannot draw the conclusion that the purpose of scientific study is to enable man to destroy himself. On one point the most cynical plutocrat and the most ruthless Party oligarch agree. They may admit in private that they govern largely in their own interest and that there is a great deal of humbug about the forms and methods they employ. Even so, they maintain that this cannot be helped; it is the price society must pay if it does not want to be still worse governed. If they argue against each other about the merits of their respective forms of government, they do so by listing benefits conferred, not on the ruling class itself, but on the whole community. There is here the admission that some universal standard exists; that, whatever the purpose of some governments in this wicked world actually is, it ought to be the conferring of benefits on all the individuals concerned.

What are these benefits, by reference to which judgment can be made? The most obvious and elementary is that of protection against internal disorder and aggression from without. In the days when man's scientific knowledge and control over nature were so slight that it was idle for peoples to hope for much more than a frugal and laborious life, the capacity to protect was the main criterion of government. In the 7th century it was proudly recorded of Edwin of Northumbria that in his realm 'a woman with her babe might walk scatheless from sea to sea'. Even today the Czechoslovak Government particularly justifies its rejection of the former democratic system by the assertion that that system led to the conquest of the country by the Nazis; and special mention of this is made in the preamble to the Czechoslovak Constitution. When, however, improved productive technique widened man's horizon, a second criterion grew in importance; good government was that under which it was possible for the material standard of life of the whole people to improve. This is, today, the main consideration swaying democratic electorates and occupying the attention of Communist governments. It is, however, a criterion with a large, vague and expanding content. At first it may be thought of as connoting larger, more varied and more attractive supplies of food, clothing, houses, furniture, etc.

But as a man or a community becomes capable of producing, and therefore of consuming more, desire is not restricted to what are commonly called material things. There comes a demand for books to read, entertainment to watch, leisure for study, opportunity for sport, adventure and exploration. It is increasingly expected of government that it should not only make men safe and enable them to be prosperous, but also encourage them to be cultured, gracious and fully-developed. Man has cherished this ideal even in early days when the prospect of its realization was slight. Early in the epic story of the Hindu prince Rama we find the words, 'There was once a city called the Invincible; and the people therein were prosperous, well-read, contented and full of faith'. This may be history or legend; our concern is with the implied standard of values. Today, all over the world, governments are greatly concerned to improve their systems of public education. No doubt this is largely because they realize that a better-educated people will be a more productive people. Yet in this concern there is also an unmistakable element of belief that man's life should not only be more prosperous but nobler and more dignified.

We list, then, as the true purposes of political activity and the criteria by which governments may be judged, the safety, prosperity and dignity of human beings. If we examine them more closely we find a fourth criterion inherent in all three. If a man is told that his government protects him from bandits he expects the government's own behaviour towards him to be better than that of a bandit. If he is taxed for no social purpose, but to provide his rulers with luxuries, or if the police expect him to give bribes, arrest him on bogus charges or interrogate him with brutality, he might as well pay ransom to a bandit. If he is told that the government's policy enables him to get a proper standard of life, he asks what a proper standard is. In answering this question he will be partly influenced by a comparison of the present with the recent past; and, to a lesser degree, between his own standard of life and that previously enjoyed by his father. He will be even more influenced by the standard of life he sees other citizens—or even the citizens of other countries—enjoying at the moment. If he formulates his ideas definitely, he will find that he conceives a proper standard of life as a fair share of the total wealth produced. A wage for a coal miner, or a pension for an old man, which is fair enough in one generation may be unfair in the next, if in the meantime the community's total wealth, and the incomes of some other sections of the population, have increased. A fair share does not necessarily imply an equal share for everybody: it does im-

ply that if A. is richer than B. it should not be for some purely arbitrary reason, or because A. likes it that way and is in a position to produce that result—it should be for some reason connected with the welfare of A., B., C., and all the rest. We may say, for example, that if A. hews more coal than B. he should get a higher wage; the inequality will be a stimulus to greater production, which will benefit everyone. We may argue that a particular occupation ought to be rewarded at well above the average rate, on the ground that if it is not, too few people will enter it, and the whole community will suffer from lack of an important service. Those who pursue this topic will be launching out into a vast sea of argument about the distribution of wealth, and may reach conflicting conclusions; but the disputants will all have one thing in common. Each will be trying to show that his ideas about distribution can be justified by reference to the welfare of all individuals. They accept the principle of social justification, while arguing about the correct conclusions to be drawn from it.

If we apply this principle of social justification to the cultural part of the standard of life we shall be concerned as much with quality as quantity. Not only should the citizen have his fair share of leisure; he should be able to use it according to his best judgment—a judgment not overridden by governmental compulsion and not distorted by the pressure of private commercial interests. Some part of the resources available for cultural ends must be devoted to providing him, in youth, with an education that will nourish good judgment. Here again there is room for argument about the application of the principle. To what extent is it justifiable for governments to tax some forms of entertainment and subsidize others? What is the right policy towards radio and television? But at least the principle provides a standard by which we can assess policies.

The argument which arises at each stage about how the principle works out in practice gives rise to a further consideration. It is not enough to tell a man that those who hold power, whether governments or influential private groups, have arranged the preservation of order, the distribution of wealth and the development of culture on the best socially justifiable principles. On some parts of all this he may genuinely believe that others know best, and may accept their judgment. Many people who never want to visit picture galleries are willing to pay taxes to keep them in existence. But the decisions that have to be made in applying these principles affect him in so many ways that, at least on some matters, he will claim that he ought to have a say in determining what those decisions are. We have seen

how democratic electorates are eager to pronounce on economic policies, and how undemocratic governments feel obliged to take into account what the reactions of their people will be to policies affecting the standard of life. Some people who care little for their material well-being will, at times, be strongly moved about policies affecting scientific research or the theatre. For all kinds of citizen it is important that there should be the opportunity to share in making the rules, whether the use made of that opportunity be much or little. We might add that this right of participating, as a citizen, is one part of what we called the cultural standard of life. A man denied the right of expressing his opinion about the laws and denied any share in their making is not being allowed to grow up to the full dignity of a human being.

To the earlier statement that the safety, prosperity and dignity of human beings were the criteria of good government we now make this addition, related to each one of the three. Men desire that they should not be bullied under the guise of protection; nor cheated out of their fair share of prosperity; nor fuddled with propaganda or rubbish under the name of culture and entertainment. They desire also, with relation to all three criteria, that they shall not be neglected nor treated as persons whose opinions about the methods of preserving order and raising the standard of life are of no account. They ask, in brief, for justice and for liberty. The denial of these may be more bitterly resented than any material hardship. Men may accept an unattractive wage-offer if they have had full opportunity to negotiate about it and if they believe that, in the circumstances of their industry, nothing better can fairly be expected. They may refuse what seems, measured in £ s d, a good wage if they are bluntly told 'take it or leave it' and if they have reason to believe that something better could be afforded.

There was quoted in the first chapter of this book the pregnant saying of Aristotle that the purpose of politics is first to make life possible and then to make it good. We have not, after all, gone beyond this definition, but we have set out its content, and in particular the content of 'the good life' more fully. After examining the manifold forms of government in the world we find them all imperfect in various ways but we find also a single standard by which they can be judged. How far do they enable every individual to grow up to the full stature of humanity, free from the threat of disorder and the bondage of poverty, and able and eager to discover all the gifts he possesses and develop them to the full—and to do all this as a free man, enjoying justice and welcoming the opportunity to take

part, with his fellows, in the making of laws which will ensure, to others and to posterity, both the advantages he enjoys and that broadening of them which the advancement of knowledge and skill will make possible?

If the reader wishes, using this criterion, to set in order of merit the forms of government here described, he must make his own list. By the writer, the Communist forms have been adjudged inferior to the democratic, but not without reason nor with a blind eye either to Communist achievements or the defects of the democracies. Part of our criterion is the opportunity of the citizen to participate, to discuss and to choose in all fields of policy. This is both the instrument for preventing injustice and the recognition of the citizen's dignity. Although this opportunity suffers from this or that restriction in various democracies, it is capable of growth: Communism restricts it permanently and on principle.

Communism has concentrated its attention on that part of the purpose of politics which is concerned with the standard of life and with economic justice, believing that until these matters were rightly settled no further progress could be made. So important was this settlement deemed to be that it was justifiable to achieve it by violence and to maintain it by the denial of liberty and the straitjacketing of the human mind. If the existence of these evils was at any time admitted, it was assumed that they would melt away under the influence of a just economic order. In the event, Communist States found that violence and tyranny were not tools, to be discarded when their work was done. They were habits of mind and standards of value, permanently obstructing the realization of the true purpose of politics.

Democracy, first emerging in States which at the time enjoyed neither liberty nor economic justice, laid its emphasis on the former. It was assumed that if people were assured of safety from tyranny and opportunity to discuss and vote, they could at their leisure settle other matters in accordance with what appeared to them to be justice. In the event, this expectation has been fulfilled in varying degrees. In some countries aristocratic or plutocratic influences have been so strong as to influence the whole working of the democratic forms, or even to leave their mark on the constitution. Occasionally, in multi-racial countries, the largest racial group has used its power to hamper the full exercise of citizen rights or enjoyment of liberties by the rest: whereas true democracy requires that the principle of majority rule should be balanced by the principle of equal rights for all. Alternatively, a minority racial group which is superior in wealth

and education may interpret democracy to mean equal rights between the members of that group and subjection of the rest. These racial perversions are peculiarly dangerous. A country which practises them is accepting, for its subjected races, the principle of tutelage which is inherent in Communism; it is cutting away the chief ground on which it might claim to be politically more advanced and morally superior to a Communist State. Meanwhile the homogeneous white democracies, noting that their circumstances make the working of democracy comparatively easy, may be tempted to take the smug view that democracy is all very well for them, but that countries with racial and linguistic problems, with ill-educated populations, or without long previous experience of democracy, had better be content with some form of oligarchic or dictatorial rule. This is perilously near to an invitation to the less sophisticated parts of the world to try Communism.

Yet another temptation may beset the more prosperous and experienced democracies. Throughout the world, new scientific and technical discoveries place all governments under the necessity of continually modernizing their institutions—e.g. enlarging their educational systems, reconstructing their armed forces, remodelling their local government to deal with new situations in transport, or with movements of population. No such modernization can be carried out on a large scale without upsetting or disappointing some section of the population which found the previous arrangements convenient, or is too lethargic to want a change. Democratic governments, with their eyes on the electorate, are tempted to postpone change in order to avoid vexatious disputes and possible loss of votes. If the country is reasonably prosperous for the time being, the temptation to leave things alone and hope for the best is particularly strong; in the end, some sudden change in world economic or military affairs may bring such a country face to face with the fact that its institutions are seriously out of date. This evil ought to be prevented by the democratic device of free discussion, which can arouse public opinion in good time. But while prosperity lasts there may be a feeling that there is no need to get excited and argumentative.

It may even become a fashionable doctrine that in a pleasant, friendly democracy we want as little partisan disputation as possible, and that it would be best if important questions could be 'taken out of politics'. It is assumed that because democracy eschews violence it should also eschew disagreement. This is an anaemia that can kill democracy. Continual change is a condition of survival. It is the

peculiar virtue of democracy that it effects its changes, not by the imposed decision of a minority, but by majority decision after discussion in which all may participate, If discussion is feeble, if argument is discouraged, if difference of opinion is regarded as something not quite respectable, there is no prospect of reaching an informed decision; the mechanism for democratic change is broken. Important questions—How much shall we spend on our armed forces, and how much on old age pensions? Are houses best provided by public or private enterprise? What should be the powers and boundaries of local authorities?—have got to be decided somehow. If they are 'taken out of politics' where are they to be put? In the hands of a group of experts? May we argue about the choice of those experts? When they report their findings, may we argue whether to act on them or not? If the answers are *Yes*, the matter is still 'in politics'. If the answers are *No*, we have abandoned democracy.

Communism is twisted from the true purpose of politics by the corruption of violence and terror: democracies have to guard against the corruptions of vested interest, of racial pride, and of sloth. At present the two systems are not only ideologically opposed, but established in two great military alliances. It is an over-simplification to say that countries have allied themselves together because of their ideological sympathies. The ideology and the alliance are both traceable to a common cause. Broadly speaking, the Communist group comprises peoples who either now or in the recent past have felt themselves inferior in science and industry and have experienced or feared the domination of more advanced countries. Their backwardness has caused them to choose Communism as the speediest, if most cruel, method of advance; their fears and resentments have banded them together. The tragedy of the world is that these fears and resentments are now embodied in a system so fierce, tough and implacable as to arouse their equal counterparts in the democracies: and that the old powerful nations and classes were just too late in adopting policies that might have prevented this development. If the timid agrarian reforms attempted in Russia at the beginning of this century had been started earlier and pursued more vigorously . . . if, in the 1920s, the Western Powers had listened to China's request for the abandonment of the special privileges they had previously secured from her by force . . . one may prolong the list of suppositions. Now the two groups face each other in a deadlock made more rigid by their possession of weapons which both feel they dare neither use nor abandon.

We can only speculate as to their future on the assumption that,

somehow or another, they remain at peace. Granted this, they will both feel the need to confirm the loyalty of their own peoples, to shake the loyalty of those in the other camp, and to attract those nations which are emerging from earlier forms of government and may take either the Communist or the democratic road. For these purposes both must attempt to make themselves more nearly that which they profess to be—genuine democracies, guaranteeing political liberty, personal rights, and social justice. The significance of the generous programmes outlined, though not achieved, in the constitutions of the newest democracies is that they point the road humanity must travel if it is to remain at peace. We are optimistic, though not foolishly so, if we say that this journey will be made: we are unduly pessimistic if we say it cannot be made. No overriding necessity drives the rival groups to war. The scientific possibilities of increasing one's wealth without conquering fresh territories, and the obvious political unwisdom of imperialism steadily reduce the importance of some of the former historical causes of war. Today, the one significant cause from which war may spring is mutual fear and suspicion.

It is intrinsically more difficult for Communist States, than for the others, to move in the direction of full democracy. As was suggested towards the end of the last chapter, such a development requires that the principle of the infallible Party vanguard should be tacitly or avowedly abandoned, and at present this principle seems an integral part of a precisely formulated doctrine. The scepticism of democracy, its denial that anyone is politically infallible, makes development easier. Easier, but not inevitable; for the corruptions of racial pride and of sloth have still to be prevented. Further, in a Communist State it is difficult for development to begin elsewhere than inside the ruling Party: the technique of tyranny is more efficient today than in the past, and it is harder for the excluded to revolt. In a democratic country any citizen can, if he will, promote the improvement of his country's institutions and his Government's policy. There is therefore a plain enough obligation on the citizens of democratic countries. It is that they should each be willing to devote some time and thought to public affairs; that they should hold opinions informed by knowledge and inspired by a regard for universal, and not personal or sectional advantage; that they should advance those opinions with vigour but without malice or violence; and that they should acknowledge the full implications of democracy, extending to other races and nations no lower respect nor lesser rights than they claim for their own.

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