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HISTORY OF GOVERNMENTS

by

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PREFACE

CATLIN (*A Study of the Principles of Politics*, 19). visualises politics as an exact science on the hypothesis of a "political man" who tries to control others and the resultant process is government. But human nature is complex, since man is altruistic as well as selfish. Regarded from this aspect, politics is not only a science, but also a philosophy. It is clear that the object of all sciences must be to serve human welfare. Some writers on sociology assert that it should confine itself to facts and steer clear of all philosophical and teleological arguments. But, there are others who would make it a normative science by introducing ethical considerations. The same tendency is found in other sciences, Marshall held that economics is not a normative but a positive science. It is noteworthy that the Oxford School of Economics under Edgeworth believed in the use of mathematical methods and abstractions. Pigou, who succeeded Marshall at Cambridge, was influenced by this mathematical approach, and followed Marshall's view regarding the nature of economics. But, Keynes (*Scope and Method of Political Economy*) urged that we must distinguish two aspects of economics—positive economics and social welfare economics. The latter is the study of economics from the standpoint of human society. It is noteworthy that Marshall himself had to admit that economics is only a part of the science of man. Father Carty (*Economics—A Social Science.* 1939) holds that the study of economics should be designed to further the social happiness of mankind and condemns the Neo-Classicism of Robbins. Contemporary thought is against the mechanical view of life and mind. If we, then, recognise a utilitarian purpose in the study of politics, it stands to reason that it cannot be divorced from a study of other social sciences if circumstances so warrant. Dr. R.K. Mookerji (*Institutional Theory of Economics*—Sir Kikabai Premchand Lectures 1939-40) urged cooperation in all social sciences. Long ago, John Stuart Mill had pointed out their interdependence.

No attempt has been made in this book to confine the narrative to a narrow description of political institutions. For interpreting their development, use has been made of facts drawn from history, economics, geography and even psychology. Since the subject matter is too vast, and since the book is designed primarily for students, a too detailed treatment is avoided. But the ambitious reader can profit from the bibliography found at the end of the book to probe further into a subject of his choice. More attention is given to the political institutions which developed in our country than is found in most books of this kind. The authors hope that the book will stimulate enlightened interest in the machinery of government and develop a sense of worthy citizenship, besides serving the purpose for which it is intended.

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PART ONE

CHAPTER I

THE ANCIENT WORLD

Introduction. The following definitions of a State can be compared : "The state is a community of persons, more or less numerous, permanently occupying a definite portion of territory, independent of external control and possessing an organized government to which the great body of inhabitants render habitual obedience."—(Garner). "A particular portion of mankind viewed as an organized unit."—(Burgess). "A territorial society divided into government and subjects, claiming within an allotted physical area a supremacy over other institutions."—(Laski). "Wherever there can be discovered in any community of men a supreme authority exercising a control over the social actions of individuals and groups of individuals and itself subject to no such regulations, then we have a State."—(Willoughby). "What is commonly implied in the current use of the term 'State' is (*i*) that the aggregate of human beings, thus denoted, is united, if in no other way, by the fact of acknowledging permanent obedience to a common government and having through the permanence of the relations between government and governed a corporate life distinguishable from the lives of its members, (*ii*) that the government exercises control over a certain portion of the earth's surface, and (*iii*) that the society has a not inconsiderable number of members, though the number cannot be definitely stated." —(Sidgwick). "A state is a numerous assemblage of human beings, generally occupying a certain territory, amongst whom the will of the majority or an ascertainable class of persons is by the strength of such majority or class, made to prevail against any of their number who oppose it."—(Holland). "A state is a combination or association of men, in the form of government and governed, on a definite territory, united together into a moral, organized, masculine personality, or, more shortly, the state is the politically organized national person of a definite country."—(Bluntschli).

It may be noted that Holland, unlike most writers, does not consider possession of a definite territory essential. The tribal state had no habitation, for the tribe was nomadic. For a long time, kings of Europe were regarded as kings of peoples rather than of lands. Willoughby's definition covers such primitive political societies. But, development of agriculture confined the state to a particular territory. The population of the state has a bearing on its military and economic strength.

The state must be distinguished from the government. The term "state" is abstract ; but the term "government" is concrete. While the state is permanent, governments change. Government

may be defined as the machinery through which the functions of the state are discharged and is merely its agent.[1] Government is artificial, while the state is natural. But the state operates through the government. As Willoughby remarks, "The state is natural, in this sense that we emphasise largely the unconscious manner of its growth and its dependence upon certain essential human attributes and, at the same time, differentiate it from the government which is purely mechanical."

Society should not be confused with the state. It is an unorganized mass of individuals in the state who may exercise an indirect influence on it through public opinion. The state lays down the law for it and protects it. The family is a small unit in society. It is based on common descent and kinship. As Willoughby points out, "In the family, the location of authority is natural (that is, in the father). In the state, it is one of choice. Subordination is the principle of the family ; equality, that of the state." The interests of the family, unlike those of the state, are necessarily private. The family is restricted in size and short-lived. But it is more intimate and more comprehensive in interest. In some form, it is essential for the existence of the community. In modern days, the state has taken over certain functions formerly exercised by the family like medical help, looking after the old and the poor etc., and controls certain others like inheritance of property, marriage etc. Society consists of similar groups like the family. Most of these originate from the varied needs of man, *e.g.*, the club, trade union, church etc. But the state harmonises and regulates these associations. The state may collapse, but society goes on. The state or political society is organized on the basis of authority and control over the individuals who constitute this group.

There are several theories which try to explain the origin of the state in a purely speculative way, like the theory of Social Contract. We are not concerned with those speculative theories which have really no basis. The true explanation of the origin of the state is to view historically the development of the state from its beginnings so far as these can be found out. History records various ways in which governments rose or disappeared. But we have no record as

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[1] Hobbes failed to distinguish between both. Willoughby points out that the cardinal fault of Hobbes was his failure to distinguish between the sovereign power itself and the personal hands into which its exercise is entrusted. He failed to note that, while the will of the state may be unlimited, it is possible to limit the legal competence of its agent—the government. Locke made an advance on Hobbes when he recognised that rulers are of limited powers ; but, even he does not distinguish sufficiently the community as simply a social aggregate and as a political body. Locke cannot conceive of a case in which the ruler might legally oppress the people. But Rousseau distinguishes between state and government. But his error is his confusion of the sovereignty of the state with the power of the people as a community. This leads him to annihilate the power of the government, refusing it even the power of expressing the will of the state.

to how human beings originally came to have a government. This is because a government had developed long before any historical record could exist. Scholars in the field of anthropology, ethnology, archaeology and comparative philology have tried to throw some light on the origin of the State[1].

Of course, once a state had been formed, new states can develop out of such states. Two or a number of states may join in a union, or a particular state may become divided into a number of smaller states. In some cases, a colony set up by a particular state may develop into a new state. But our real problem is to discover the way in which the state first originated.

Here also, we have to discard the legends which had cropped up concerning the origin of a particular kind of state. For instance, the origin of Rome is derived from the legend of a founder called Romulus. Theseus is said to have organized a government in Athens. We must dismiss these legends as historically unreliable.

The best explanation is to view the origin of the state, like that of other human institutions, as the result of an unconscious process of natural evolution. This might happen in different ways or in different periods of time. It is only later on that this unconscious development is followed by a conscious growth. Long ago, Aristotle remarked, "Man is a social being." So, human associations of different kinds tend to spring up naturally.

The origin of the State is the act of a people rather than of individuals. This general will is not the result of a contract as the theorists of social contract imagined and which primitive men in their intellectual condition could never have conceived of. Willoughby regards this general will as a complex of common sentiments and a common tendency of volition in respect of common interests. This common feeling may be the result of circumstances like identity of race and language or pressure of common danger. This can arise only gradually and unconsciously. Bluntschli remarks, "The universal impulse of society produces external organization of common life in the form of a state." Willoughby points out that the common will which leads to the rise of a state distinguishes the organized group called the "People" from "a mere multitude". This process would obviously be unconscious and should have been only gradual. Naturally, historical records could not be available to show this process. He says that, with the association of man with his kind, there arise by necessity social interests. "A public authority is somehow created. As civilisation progresses with greater social interests, governing powers are more elaborately organized. The government becomes complex, and, in course of time, assumes diverging shapes" owing to the influence of geographical, racial, economic and other factors. Lastly, "in course of time, the exercise of the powers of government becomes more intelligently controlled and self-directed."

[1] *See* introduction in Maxey, *Political Philosophies.*

Writers have traced three different factors which might have helped to bring about the state : (1) Kinship, (2) Religion and (3) Political consciousness.

Kinship had been the original bond of union of the human family. Sir Henry Maine remarks in his *Early History of Institutions* that the earliest tie which bound men together into communities was consanguinity. "The lowest political unit was at first formed of men bound together by a tie of kindred, in its first stage, natural, in a later stage, either natural or artificial."

Scholars are not agreed as to the course of development from the family. Maine in his *Ancient Law* infers from evidence derived from comparative jurisprudence and more specially, from a study of Roman Law, that human society in the earliest times was "in fact and in the view of the men who composed it, an aggregate of families" and not a collection of individuals. He considers hence that ancient law "is so framed as to be adjusted to a system of corporations." According to him, the original family was controlled by the oldest living male and it included his wife or wives, his sons with their wives and families, his unmarried daughters and his slaves. This family is called the patriarchal family, because it is under the absolute power of the *pater familias* (the father of the family). This single family was supposed to have developed in course of time into a number of families which were still held together under the control of the head of the original family. This formed the clan. A still wider group of clans was the tribe which claimed descent from a common ancestor. A number of tribes constituted the state. Even now, the idea of kinship continued. Maine supports this patriarchal theory from three sources of evidence : (1) Ancient law, for example, account of the Jews in the Old Testament ; (2) Records of history kept by particular races, *e.g.*, account of the tribes in Athens and Rome ; and (3) what we glean from other civilisations *e.g.*, the Indian village community and the Scottish clan organization.

It is also pointed out that this patriarchal family supplied the framework of the primitive state. The discipline *e.g.*, command and obedience characteristic of it prevalent in the family, was the basis of political authority. The religious and judicial powers possessed by the father *e.g.*, *Patria Potestas* at Rome came to the king. The leaders of the clans formed the advisory council of the king. Old customs formed the basis of the law. Kinship supplied the necessary unity to the state, *e.g.*, the Hebrews regarded outsiders as Gentiles.

Jenks, who, in his *History of Politics*, gives a good account of the patriarchal family, points out that it differed in many respects from the modern family : (1) Its membership was based on a tie of blood rather than the tie of locality. Thus, the king was the ruler of the people and not of the land. (2) Wholesale admission of outsiders was practically impossible. (3) The life of the family was regulated by custom. (4) The government did not deal with individuals but with groups.

In answer to the criticism that several clans are known to have differed in blood and not to have belonged to the original stock, Maine re-stated his theory in a different form in his *Early Law and Custom* and urged that the patriarchal group held together, not merely by a tie of kinship, but common obedience to the patriarch. The admission of strangers would be regulated by the fiction of adoption which gave the outsider kinship in the fold and the clan would form "a fictitious extension of the family". Thus though the clans would be unable to trace a definite tie of blood, they would regard each other as descended from a common ancestor. These clans would form tribes.

This picture of the formation of the state from an original patriarchal family has been criticised by several writers. Many consider that this explanation is too simple. Research in many parts of the world had shown that social organization was really complex. McLennan and Robertson Smith have shown that in some tribes, kinship is traced through females. As a matter of fact, McLennan (*Patriarchal Theory*), Morgan (*Ancient Society*), and Jenks (*History of Politics*) uphold what they call the Matriarchal Theory. According to them, there was original promiscuity and the earliest form of marriage relation was polyandry. Thus, kinship through females preceded kinship through males. This type of matriarchal society survived in some tribes like those in Australia and Tibet and the aborigines of America, and left traces in places like Malabar. Thus, the patriarchal family was not universal.[1] Scholars

[1]Ratzel held that there was first a chaotic stage of promiscuity in which sexual license was unchecked in the unorganized society. This was followed by group-marriage, and now the clan had its origin. Bachofen in 1861 derived patriarchy from an older Mother-Right which, in turn, originated from promiscuity. This theory was supported by L. H. Morgan a nd J.McLennan. Morgan (*Ancient Society*) supported this theory from the example of Polynesia and held that while the group was still promiscuous, only members of the same generation in it would intermarry.

Morgan, as against Maine, also held the original clan matrilinear. Briffault (*Mothers*) also favours the matriarchal theory and holds that the distinctive character of man forms a development of social instincts which appeared in the long association of the child under its mother's control. He believes that the "unconscious" of Freud is really the natural biological mind of man which he has inherited. Everything above its level in conscious process is due to social training This inhibition is not found in animals which lack also the restraint of socially inherited tradition.

Westermarck held that men were by nature monogomous. Promiscuity, polyandry and polygamy were aberrations. This theory is unproven. In his *History of Human Marriage* he holds that the family formed the nucleus of every social group, and communal marriage was of a n exceptional nature. So, according to him, it cannot represent a stage of human development. But, Frazer (*Totemism and Exogomy*) shows the existence of group marriages at a period anterior to any family group or any recognition of human kinship. However, present-day opinion as represented by the Viennese school of anthropology headed by Schmidt holds that the primitive family was generally monogamous, and out of this developed different groups of patrilinear and matrilinear branches.

[*P.T.O.*

believe that there is no ground for believing the patriarchal family to be the only primitive unit. It is also pointed out that the great power of the *Pater Familias* is found only in Rome. In the Hindu family, the eldest male is simply a manager. If he is unfit, a worthier relative is elected.

Regarding the authority of the chief, Maine thought that this power was based on the tie of blood. But it has been pointed out that, in choosing the chief, his hereditary descent was not the only factor taken into consideration. His military capacity and supposed possession of divine power would also have counted. Studies in Slav society show that the tribal chief was elected, not because of descent, but because of capacity. Further, it has been pointed out that physical force alone would be insufficient to explain the continuance of control over men who were grown up. Evidence has shown that the power of the early chief must have been slender. He did not exercise complete control of the person and property of the tribesmen. On the other hand, matriarchy alone could not have been the origin of political power in all human societies. What we can safely conclude is that in early society kinship of some sort was the earliest and strongest bond, though gradually it was displaced by other factors. There was belief in a common origin, real or fictitious.

The early state was based on kinship. The tradition of a common origin of its people was often strengthened by racial similarity which might be the result of both heredity and environment. In early times, the stranger was often suspected as an enemy. But when families spread into groups, the original kinship gradually became shadowy. The tie shifted from blood relationship to locality. No modern state coincides with a pure race. For instance, U.S.A., racially diverse, has a common American nationality.

Turning now to the influence of religion, this was very powerful in early human society. Early man, because of this narrow mental outlook, regarded natural phenomena and even psychological factors as manifestations of supernatural agency. Nature worship was combined with the worship of the spirits of departed ancestors. This ancestor worship was important, because common respect for ancestors permanently unified the group. Hence, the family was

[*Contd. from p. 5*
That human society was originally promiscuous is an unproved assumption.

MacIver (*Modern State*) notes that the term "Matriarchy" is an inaccurate expression, for there is no "Woman-rule" or exalted respect for women It is simply a social condition when maternity was a far more conclusive guide than paternity. But it gave the women social importance. While Morgan holds that matriarchy gave place to patriarchy in which descent had shifted from the maternal to the paternal line, and thus there developed the village community based on the authority of the father, other scholars dispute whether this group or the other was the earliest. But, when the tribe had emerged out of savagery into the pastoral and agricultural stage, patriarchy usually prevails. The savage is more completely a part of his community than the modern man, and is more bound by inflexible custom.

also a religious association and, even in the tribe, common worship was a powerful link of union. The kings were also priests of the tribe, and religion supplied also the basis of early law.[1] It must be remembered that, in early society, the influence of religion alone was able to surmount primitive savagery and teach the tribe the virtues of reverence and obedience. Long after the original bond of kinship was forgotten, common religious beliefs cemented the early tribe, *e.g.*, the Hebrews.

In ancient and mediaeval times, common religious belief was important. For instance, the Jews scattered over the earth kept up their unity. The Magyars and the Turks, though of the same Turanian stock, developed into separate peoples, because of religious differences. In the modern state, patriotism does not depend on religious affinity.

Political consciousness arises only later on, we see this process clearly in Greece. Very early, kinship lost its importance and was superseded by the status of citizenship. City life which sprang in Greece led to the rise of a critical and restless population which was quick-witted and tended to disregard the claims of authority. Hence, the importance of religion also diminished.

This political consciousness is at first not visible to the people themselves. This consciousness is due to the fact that some sort of regulation concerning the contact of men with each other became necessary. The reasons which gradually led to the growth of political consciousness were the following : (1) The tribe in course of time gave up its nomadic habits and engaged in pastoral and agricultural pursuits. This led to the growth of wealth and consequently to the problem of the protection of person and property. So, we have the beginnings of a more refined law and government. (2) Common danger menaced the tribe and the consequent need of protection from attack by other tribes led to a movement to more definite and concerted measures either for defence or for the purpose of offence. This consequently leads to a growth in the authority of the government. We find, for example, that several great war leaders became kings of the tribes. (3) As population increased and the society advanced in its social and economic condition, there arose the need for further elaborations of the functions of the government. For example, law in primitive times is associated with religion. Gradually the legal system becomes stable, instead of depending upon religious dictates or the judgments given by the chiefs. Gradually people understand the true purpose of the law, and obedience to law

[1] The sanction of law and the authority of the ruler were derived from God. In Hebrew theocracy, God was supposed to take part in the government, the king being only his agent. Theocracies and despotisms, where power was based on the supernatural sanctions of religion were very important in the early evolution of the state. On the historical importance of theocracy, *see* Seeley's *Introduction to Political Science* Lec. 3.

instead of being based on superstitious fears of possible religious consequences becomes more intelligent.

Thus, as Seeley has remarked, the tribe, the ecclesiastical community and the state are the only three different stages in the development of a process. In modern days the old physical bond of kinship has been replaced by the emotional link of nationality. Religion has become distinct from administration. Law is based on human will. Unconscious evolution has been replaced by deliberate, purposeful action of the community. But, even in modern days, the influence of the past still colours the minds of the people. The ideas of kinship and religion still have an important place in society. It may also be noted that the stages of development have not been always uniform in all cases. In some of the early states of the East, the fixity of primitive ideas had often cramped progress and hence led to social stagnation, marked by tribal and theocratic influences.

The process of evolution of the state is from the simple to the complex. Governmental organs are differentiated and defined. As Dealey points out (*Development of the State*), "The ancient powers of the executive, once so enormous, have been steadily reduced in scope, by transfer of power to the church, the judiciary, the law-making body, and the electorate." The power of the state, which was indefinite and irregular, becomes certain and purposeful. The population and area of the state grows up. Religion and morality ceases to be connected to politics.

Historical relics of the lack of separation of powers still continue in the power of the executive to pardon criminals and the power of impeachment possessed by the legislature.

Bluntschli gives the following classification of the historical origin of different states[1] : (1) A number of people gather round a leader and set up a state. An authentic instance is the settlement of the Pilgrim Fathers in a new territory. Bluntschli calls this the original formation of a state. (2) A state may develop from an existing state—what Bluntschli calls a "secondary form". That is,

[1] Dr. Oppenheimer (*The State*) uses the anthropological enquiries of Ratzel to support his theory of the origin of the state as born from the subjugation of one group by another. After a preliminary period of looting, the group is conquered and is permanently exploited by the conqueror for economic purposes. Even after common interests had united both groups externally, this class rift continues internally, in his opinion. He thinks that economic exploitation will disappear gradually, as the subjected classes gain equal rights. But this theory of force alone cannot explain the origin of the state. Mere brute force enshrines only the power of the physically stronger. Social instincts born within us form the chief explanation. It is public opinion and social conformity which explain the obedience of the citizen to the state, not the coercive power of the state. The exceptional instances mentioned by Laski (*Authority in the Modern State*) like suffragettes and conscientious objectors to military service only prove the rule. Expansions of the state need not be due only to force but to advantageous position and resources, though conquest was also one of the causes.

it is not 'born', but made consciously. Thus, we have confederations like the Peloponnesian League, a federation like the U.S.A., division of states by inheritance as in the Middle Ages, concession of independence to a colony by the mother country etc.

In unorganized unions like alliances for mutual security, each state retains its sovereignty. The same is the case in Personal Unions where a number of states are under one common ruler, but each state has its own identity. Even in a confederation (the *Staatenbund*), the states are sovereign and free to withdraw from it. But in a federation (the *Bundesstaat*), the component states lose their sovereignty and become one state.[1]

There may be also international unions of states for particular purposes, *e.g.*, Postal and Telegraphic Unions, the U.N.O. etc. Here also, the states are distinct organizations and sovereign.

Wilson observes (*The State*) : " In primitive society, men were born into the station. Their relations to each other were not matters of choice or voluntary arrangement. No man could rise out of his 'caste.' To break away from one's birth station is to make a breach of not only social, but also religious duty. Primitive society rested, hence, not on *open contract*, but status. Change of the existing social order was undreamt of." This is an amplification of Maine's dictum that progress has been from status to contract. But Barker (*Political Theories from Spencer to Today*) points out that this dictum has some limitations. Investigations are disproving conclusions that the individual in primitive society was wholly merged in his group.[2] In modern days, there is a tendency to regard economic groups, not individuals, as the units of society. The process mentioned by Maine is also not universal. Ramsay Muir in his introduction to Gilchrist's *Indian Nationality* points out that "individual initiative (in which the West put its trust) is in India restrained by a multitude of inhibitions". Still, we may accept that the general development has been that the individual slowly got freedom from the control of the group over his actions, words and even mental processes.

MacIver (*Modern State*) enunciates the following as the characteristics of primitive society :

(1) It consists of small and relatively isolated groups. Every family depended directly on hunting, fishing, gathering of roots and fruits or rudimentary agriculture. This hand-to-mouth existence made limitation of members necessary, so that even above the heavy mortality due to disease and pestilence, customs like abortion, infanticide and various sexual taboos prevailed. (2) Experience was

[1] The following definitions illustrate it. Sidgwick (*Development of European Polity*, Lec. 29) defines federation as the plan of uniting communities for certain important purposes of government, while they are separate for certain important purposes. Dicey defines a federal state (*Law of the Constitution*, Ch. 3) as a political contrivance intended to reconcile national unity and power with maintenance of state rights.

[2] *See* Lowie—*Primitive Society.*

stored in oral tradition. Fear of the forces of Nature which were personified, cramped and distorted thought. (3) Custom prescribed ways for anything, and individual initiative was crushed.

The family is the first of all societies in beast, bird and men and depended directly on hunting, fishing, gathering of fruits and roots and rudimentary agriculture. The mutually defensive family group helps its members to get food and to get redress for wrongs done by other groups. Several families form a horde under pressure of a common enemy. War destroys the less closely knit horde and makes the savages value discipline and obedience.

The change from the nomadic stage to agriculture heralds the appearance of property. Regarding property, MacIver (*Modern State*) holds that the term "communism" is misleading. What was really owned in common was the consumable product. Anthropological investigations show that the village community was really an advanced unit where the householders were, in respect of land, shareholders. Only the waste and the meadow were really common. The anthropologist Schmidt, declares that, while land was held in common by the family, individual property also existed in a few objects which could be used by individuals like nests of birds. The tribe needs some authority to regulate it and defend the tribe from attack. A tribal chief appears. Monarchy was the oldest type of government. It gave unity and strength to the state. The advantage of hereditary monarchy was that, in the words of Lewis (*Use and Abuse of Political Terms*), "ambition of dangerous individuals was disarmed by removing the great prize of authority at all times and entirely from competition." But, as MacIver (*Modern State*) notes, no government is a mere monarchy. "The single seemingly supreme ruler nearly always has a Council of Advisers." This combines the advantages of a Single and a Plural Executive. The executive receives advice on various bearings of a particular problem from different angles. But he retains ultimate responsibility. The earliest executive was a king supported by divine feeling and helped by hereditary nobles and councillors.[1]

[1] Maine (Lectures 12 and 13 of his *Early Institutions*) criticises the view of Austin that sovereign power is essential in every political society and without it there can be no law. He points out that, in the earlier stages of society and in the East, laws were rarely positive commands of a sovereign A sovereign, in the Austinian sense, is therefore not essential to a state. Even the most despotic ruler in the East must obey long-standing customs which he would never dare to alter. Austin answered this charge by saying that "what the sovereign permits he commands." MacIver (*Modern State*) styles this legalist view unreal for custom and usage set bounds in every direction. Bryce says that Austin's theory can apply only to states with an omnipotent king or legislature. It cannot apply to other lands or other ages.

The Historical School including Savigny, Maine and Bryce criticise the Analytical School represented by Austin and others, and say that, just as that of the old orthodox political economists, their analysis can be true of only one set of conditions like England at the present day. Savigny urged that customary law existed as law independently of the

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TRIBAL POLITY

In the earliest stage the tribesmen were nomads who got a precarious living through hunting. Later on, with the development of pasture and agriculture, the tribe gradually settled down on a piece of land and developed into a village community. We have examples of primitive tribes even today in Africa, Australia and the Pacific Islands. These form small and relatively isolated groups, but constant fighting has led to some kind of government. The community is rigidly *bound* by custom and there are prescribed ways for doing everything. Thus, certain places or things or certain lines of conduct are forbidden (*taboo*) for tribesmen. Custom dictates even the organization of the society, *e.g* , the totem groups into which the Australian tribes are divided.

A tribe may expand further and become a bigger unit in the following ways : (1) Conquest of a number of kindred tribes which leads later on into the amalgamation of all into a bigger community, *e.g.*, the amalgamation of the Anglo-Saxon tribes in England. (2) Extending the orbit of the tribe to include outsiders by the device of the fiction of adoption, for instance in the Hindu community. (3)

[*Contd. from p. 10*)
state. Maine shows that, throughout the greater part of world's history, law arose otherwise than according to the theory of Austin. To meet this criticism, Wilson includes as law customary usages which had come to have binding force. Austinians like Willoughby and Holland urge that customary rules do not become law in a strictly legal sense until they are accepted and enforced by the state. The despot mentioned by Maine in his *Early Institutions* may have never introduced a single law, but he enforced old custom and thereby elevated it into law. Jethro Brown (*Austinian Theory of Law*) says : "It is of course obvious that men obey the law through various motives. But, it still remains true that what makes a particular rule of conduct law is not the fact that it may be use ful, but that behind it is the majesty, the authority and the force of the state.....It is plain that claims which are enforced by the state are more truly rights than those which rely for their efficacy merely on the goodwill and conscience of our neighbours." "The state", remarks Willoughby, "first enters the field as the interpreter and enforcer of custom rather than the creator of new rules of conduct. As time goes on, these judicially determined rules increase in number and rigidity."

The customs were the general unwritten usages of the family, the clan or the tribe and have intimate connection with religion. Disputed cases get decided judicially by the state in course of time. When society becomes more complex, the indefiniteness of the old customary law becomes evident, as disputes increase in interpretation and new conditions arise not provided for by the old custom. The state thus assumes the duty of interpreting custom, rather than leave the decision to private might or uncertain public opinion. This interpretation makes use also of legal fictions in expanding the scope of customary law. Thus, a stage comes wherein a case when there is no pre-existing rule, a rule is created under the guise of interpreting custom or old custom is expanded by legal fictions.

Even today, custom serves as a check on legislation. Only such law as has the support of public opinion or moral sentiment will be respected. Willoughby remarks, "Custom with its slow tread will render obsolete laws that have become anachronistic and will create new principles that will force their recognition upon the legislature and courts."

The tribe may enslave other communities and thus increase its bounds. (4) A number of tribes may voluntarily unite together, *e.g.*, the six nations of the Red Indian tribes called the Iroquois.

With regard to primitive tribes, we get some account about some of them from historical records of the past. The Greek poet, Homer, has left us an account of the primitive Greek tribes. We have also accounts of Roman writers about the primitive Roman people. From the Rig Veda we get some ideas of the primitive Aryan tribes of India. The Roman writers, Caesar and Tacitus, have left us some description of the primitive German tribes.

Sidgwick (*Development of European Polity*) considers that judging from the accounts which have come down to us, the German tribes seem to have been in an earlier stage of development than the Greek, the Indian and the Roman tribes. At first, some tribes had no kings, but, later on, generally, a successful war-leader became the king. In choosing him, the tribe was led by their estimate of his personal qualities. The king was attended by a band of followers who were bound to him by a close personal bond of fidelity. In all important matters, the final decision lay with the tribesmen. There was a council of chiefs which prepared the business to be decided by the tribal assembly. The tribal assembly consisting of all the free men of the tribe settled all questions.[1] It elected the king. Justice was administered in the assembly by chiefs on the basis of old custom. It is significant that the assembled free men decided the matter on hand, not by vote, but by acclamation. It is only later on, for example, when some of these tribes migrated to England and France, that further development of the king's power took place.

When we first hear of the Aryan tribe in India, it had already passed out of the nomadic and pastoral stages into the agricultural stage. Amongst the tribes, the king (*Rajan*) appeared from the first as a war-leader. We find a number of royal officials mentioned including the royal priest (*purohita*). Kingship was apparently elective. We find no definite council of chiefs, but there was a tribal assembly (*samiti*) which was all-powerful. Later on, with the growth of the king's power and his territory, the kingship tended to become hereditary and, gradually, the tribal assembly ceased to meet. When we come to the historical period, the king was governing the land with the help of a council of ministers.

In Greece, kingship was well developed. The king (Basileus) was usually hereditary. He was leader in war and was also the high priest of the community. He was supposed to be inspired by the god Zeus when he gave judgments in disputes. But this administration of justice seems to have been little more than some kind of arbitration. The king received gifts from the people for his

[1] This primitive democracy cannot be confused with the modern. Montesquieu is wrong in saying, "The germs of parliamentary constitutions are to be found in the forests of Germany." A good picture of this ancient Teutonic tribe is in Jenks (*Law and Politics in the Middle Ages.*)

sustenance. The king really possessed little power. In relation to the chiefs, he was only the first among equals. Though believed to be descended from the gods, he was not himself regarded as divine. Hence, the honour paid to him was greater than his power. There was also no fixed rule of succession. Regard was paid only to personal capacity. There was a council of chiefs (*Bule*) consisting of the great chiefs. The tribal assembly (*Agora*) was the final authority in most matters; but there was no vote or debate. Most disputes were also decided here. Later on kingship disappeared in most parts of Greece; though it survived in some outlying places like Macedon. Here, the king gradually increased in power. But, even in the days of king Alexander the Great of Macedonia, the king was not entirely an autocrat and freemen possessed some rights.

It is noteworthy that the group of personal followers of the king which we find in the German tribal polity, is not present in Greece or Rome. It is also noteworthy that kingship in Rome gradually became more powerful than in the other cases which was the reason for its overthrow and disappearance.

The Roman monarchy was not hereditary. The senate chose an *interrex* who chose the king. A contrast from the position of the monarchy in Greece may be noted. In Greece, the king was believed to derive his descent from the gods, though he was not himself regarded as a god. The king was only the intermediary with the gods in the sacrifices and prayers of the community. In Rome, though the idea of divine influence was present, the Roman kingship was purely human and the king was from the beginning an individual magistrate. Hence it was that hereditary succession to the Roman kingship was less prominent.

As regards the king's powers in Greece, the king's authority depended more on his influence. Even his judicial power was not arbitrary as he was bound by old custom. It was only in war that he had some power. In general, the king's powers were limited by the power of religion and by the customs of the community. In Rome, on the other hand, the king enjoyed a greater degree of power and the extent of this power was symbolised in the phrase "*Imperium*". This "*Imperium*" empowered him to issue his decisions in justice and absolute authority of life and death in war. But both in Greece and Rome, the king was the general of the army and the high priest and judge of the community.

The *Senate* or the Council of Chiefs consisted of three hundred persons nominated for life by the king. These were the chief nobles and the king must rule with their advice. The tribal assembly consisted of two bodies: (1) the *Comitia Curiata* in which the citizens were grouped according to divisions based on birth called *Curiae*. The assembly did not vote by individuals but each *Curia* had one vote. There were in all thirty *Curiae*. (2) The *Comitia Centuriata*. In this the citizens were grouped into classes based on wealth which were called *centuries*. It is believed that this assembly

was set up by one of the kings called Servius Tullius. Since this assembly was the same as the army, it became more prominent in course of time. The assembly sanctioned the election of the king and decided important questions like peace and war. But it is noteworthy that there were no debates and the assembly had only to accept or reject the proposal put before it.

GREECE

The development in both Greece and Rome was towards the community called the City State.[1] The following may be regarded as the characteristics of the city state : (1) Each city state was a unit of a small size and population. (2) Each of these units was an independent community. It was defended by walls and had its own territory. (3) The social and religious life of the people were closely connected with the gods and festivals of the city. Hence, there was no separation between religion and politics. (4) The city state not only had citizens, but there was a large population of slaves to minister to the needs of the citizens. (5) Each city state had intense patriotism which was limited to itself. Hence, no wider unity between different city states was possible. Mutual jealousy prevented any greater union than a loose confederacy. Even the most brilliant ancient philosophers like Aristotle could never look beyond the conception of a city state.

We shall first take up the development of the city state in Greece. We have the most important examples in Athens and Sparta. This type of community spread owing to Greek colonization of the coasts of Asia Minor, Sicily, South Italy and Eastern Spain. It must be noted that a Greek colony differed from a Roman colony and a modern colony in the fact that there was no political unity between the mother city and its colony. The colony remained an independent political unit connected to the mother city only by a tie of sentiment.

The process by which a number of villages formed themselves into a city state is called by the Greeks as *synoecism*. After the development of the city states, monarchy declined except in outlying areas like Macedonia. Power was taken over by the nobles. Thus, between 800 B.C. and 700 B.C. of a primitive aristocratic government succeeded the primitive kingship in most parts of Greece. Sometimes, a clan belonging to the royal family itself took over power as in Corinth. The onset of this kind of government was sometimes gradual, as in the case of Athens. An aristocratic government, being conservative, ensures stability. But, being based on birth, wealth or intellect, it is government by a minority and tended to be oppressive. By the seventh century there was a movement against this aristocratic government. The general discontent was taken advantage of by ambitious individuals who overthrew the power of the nobles and set up their own power. Such an

[1] Refer MacIver – *Modern State.*

individual was called by the Greeks a tyrant, and his rule was called *tyrannis*. Tyranny may be exercised by all forms of government ; but the Greeks always used the term to designate the exercise (not abuse) of sovereignty by one person. Greeks have distinguished two periods of tyranny : the first period (seventh and sixth centuries B.C.) and the second period (end of the seventh to the middle of the fifth century B.C.). But tyranny was a factor which was always present in Greek politics. Still, it must be noted that tyranny was not simultaneous or universal throughout Greece. Tyranny also cannot be regarded with the same bad connotation which it has in modern times. Tyrants were often good rulers who gave necessary security to the body politic and often promoted culture. But many tyrants were corrupted by power. Further, Greek political thought never regarded *tyrannis* favourably, because the tyrant obtained his power by violence regardless of the law. Aristotle sums up the Greek disgust for the tyrant in the words, "Tyranny is monarchy used for the advantage of the monarch." Tyranny, hence, was often short-lived. The longest tyranny was that at Sicyon which lasted for a hundred years. In the later period of tyranny, however, the Greek colonies in Italy and Sicily became subject to long-continued tyranny under military leaders who owed their power to the fact that the Greek colonies here were exposed to the menace of attack from the powerful empire of Carthage.

After the fall of tyranny, the general drift in Greece was towards democracy as Aristotle himself recognises. Oligarchy continued only in a few places like Corinth ; but in all Greek city states there were powerful oligarchic parties and very often the struggles of these factions led to civil disorder which the Greeks called "*stasis*".

Democracy in Greece was most developed at Athens. By the 7th century B. C., monarchy was displaced by an aristocracy in Athens. Royal power was transferred to nine magistrates who were called the *Archons*. The Council of Nobles, called the *Areopagus*, elected the *Archons* and controlled the government. The assembly of the people, called the *Ecclesia*, had little power. Discontent with the rule of this oligarchy led to the rise of law-givers, the most important of whom was Solon (594). Solon solved the problem for the time being. The *Archons* were still chosen from the richest class of the people ; but they were to be elected by the assembly of the people by a process which combined the procedure of election and lot. The use of the lot was important, because it destroyed the influence of wealth in influencing politics. As a further check upon the oppression of the *Archons*, Solon constituted a Jury Court called the *Helaiaea* composed of citizens of all classes chosen by lot which could hear appeals from the *Archons*. Thus, Solon gave the people power to judge the use of governmental powers. To prepare business for the assembly, Solon set up a new council consisting of four hundred members chosen by all the citizens except the lowest property class. The constitution set up by Solon was still an aristocracy based on wealth ; but its powers had been limited. This

constitution, however, failed to solve all problems permanently. Turbulence of factions led inevitably to the rise of a tyrant, Pisistratus (539-527). The rule of Pisistratus was moderate and promoted the interests of the lower classes. The Solonian constitution was maintained in form ; but the tyrant was all-powerful. After him, the tyranny degenerated. Another great reformer, Cleisthenes (508), reorganized the government. His reforms constituted a great step towards democracy. He regrouped the people into ten territorial tribes, disregarding the previous division of four tribes which was based on kingship.[1] The creation of these local tribes ended the old factious quarrels. A council of five hundred consisting of fifty persons chosen by lot from each tribe formed the chief governing body. No measure could be brought before the assembly till it was prepared by this council. The *Archonship* was thrown open to the moderately wealthy classes also. Besides the *Archons*, ten generals called *Strategi* were set up to look after the army and war. To safeguard against a revival of tyranny, Cleisthenes set up the device called *Ostracism*. Any citizen against whom there was a large majority demanding his expulsion was exiled for a period of ten years. The constitution set up by Cleisthenes was a moderate democracy, a form of government which the Greeks called *Polity*.

This Polity became a complete democracy under another great leader, Pericles. As a result of his reforms, the *Ecclesia* became the sovereign body and had supreme control of all government. The *Archons* were now chosen from all classes ef citizens by lot. By the fourth century, all citizens who served as *Archons*, in the *Helaiaea*, in the council of five hundred and in the *Ecclesia* were paid. Pericles himself held office as Chief *Strategos* to which office he was elected year after year. His popularity and powers of oratory were responsible for his long rule.

Thus, unlike modern democracy, direct democracy flourished in Athens. Naturally, this was possible only in such a small geographical area. The Athenian democracy showed undeniable political skill. Most of the work of the government was done by the citizens. The institution of the lot and the fact that all magistrates held term only for one year and that for most of these officers there was no re-election of the same person, ensured that all persons of the community would have a chance to take their share in public service. Vesting of functions in large boards, instead of individual officials, made each member a check on his colleagues. Each citizen had also the right to prosecute officials. Spirit of independence, love for equality and fear of tyranny led to denial of large powers to the magistrates.

City life promoted intellectual agility and lessened the mystery of authority. The "critical and restless" democracy which developed here was quite unlike the "incohate, primitive" democracy of the tribe, and governmental functions became more elaborate.

[1] Thus, for the first time in history, political interests overrode the natural association of the family and the tribe.

There was no bureaucracy in Athens, as every citizen was by turns a civil servant, a minister or a soldier. Still, there was an organized official hierarchy with elaborate functions The highest were the *Strategi* who looked after war and general administration A number of boards looked after finance. The Nine *Archons* had miscellaneous administrative and judicial functions. Offices were vested in boards whose members were chosen by lot or selection. The Greek idea was that citizenship implied personal participation in the responsibilities of the government. "The full citizen in turn ruled and was ruled."

The Greek states easily changed their constitutions. Athens had eleven constitutions from 624 B. C. (time of Draco) to 404 B. C. Bryce explains this phenomenon (*Modern Democracies*) as due to the supremacy of the citizens in all spheres. But the Athenians made a distinction between laws proper (which would be of permanent effect) and decrees (issued for particular purposes). The former could be changed only by the *Nomothetai* (a commission chosen by lot by the assembly). Whoever induced the assembly to issue any decree which transgressed the law in form or substance could be accused by any citizen and punished by fine or death. This check was, however, imperfect. The assembly was often impatient of checks.

Athenian democracy has been criticised by many writers, but most of these criticisms lack substance : (1) It has been remarked that the democrats oppressed the rich by overburdening them with taxation and by schemes of redistribution of land. It has also been pointed out that often wealthy persons were blackmailed by unjust prosecutions, which, indeed, led to oligarchic revolutions in some states. Though this happened to some extent, the industrial and commercial prosperity of Athens shows that the persecution of the wealthy was not very serious. In many cases, the wealthy persons followed the old custom of accepting burdens voluntarily. The persecution of the rich was, of course, worse in some other states. In Megara, the democrats brought about confiscations of lands from the rich. Comparative moderation accounted for the greater stability of the Athenian democracy. (2) It has been said that individual liberty was not safe MacIver (*Modern State*) remarks that the range of liberty in Athens is exaggerated. The state was all-powerful and because there was no separation of church and state, even matters of religion and opinion were controlled by it. The trial and execution of Socrates, who was condemned for his views, is an instance in point. But, as against this view, we find that there is a general appreciation that individual liberty was better safeguarded in Athens than in other Greek states. Oligarchies were generally worse. Hence, Plato and Aristotle, though they were unfavourable to democracy, preferred it to oligarchy. (3) The Athenian democracy was based on the labour of slaves. As against this criticism, we must remember that slavery was found in all the Greek city states, and it was indeed necessary if the citizens were to have leisure for their political activities. In Athens, the slaves were treated more

humanely. Unlike Sparta, there was no constant danger of revolts from the subject population. (4) Women were excluded from politics. But this defect was common to all Greek states. (5) It has been remarked that the Athenian democracy showed its inadequacy in foreign policy, *e.g.*, it failed in its resistance against King Philip of Macedon. Though there is some basis for this criticism, it must be noted that all Greek states, whether democracies or oligarchies, failed against Philip and this was mainly due to their lack of unity. (6) The conduct of Athens in the Peloponnesian War which she waged against Sparta and her allies made some people remark that democracy was cruel. But the Athenians must not be judged by their behaviour in this war. Normally, the Athenian was humane. Death penalty was inflicted only rarely. There was state relief for invalids and cripples. Even the slave was protected by law and custom against ill-treatment. (7) The development of the Athenian empire led to the charge that Athenian democracy was imperialistic. The accusation that Athens was "a tyrant city" was perhaps true enough in the 15th century when the Athenian empire flourished. But, even now, unlike the rule of Sparta, Athenian rule was not oppressive. But, in the 4th century, when Athens formed her second Athenian Confederacy, she had profited by experience. The statement made by the Athenian politician, Cleon, that "a democracy cannot rule an empire" is founded on a too short view of the history of the Athenian empire. Still, we can admit that any kind of empire was unpopular in Greece, as it formed an outrage on the spirit of autonomy of the city. (8) It has been pointed out that administration of justice by the popular jury courts affected justice as the people who made up these courts were ignorant of law and were actuated by their own prejudices. As against this criticism, we may point out that in a small community, like the Athenian city state, the citizens were all neighbours of one another and so could judge matters fairly.

It is only later on when we come to the 4th century that there is a decline of public spirit. But this decline was common to all Greek states. In its best days, the Athenian democracy was undoubtedly efficient, and no other Greek state did so much for its citizens, helping also their intellectual and aesthetic education.

The Spartan constitution was originally a product of evolution. Monarchy was displaced by oligarchy as in other Greek city states. The next transition was to a limited democracy and, at this point, the constitution became crystallised in the 6th century and from then on was artificially preserved in a condition of unique stability. There were two kings who were hereditary. These formed the priests of the community and led in war.[1] But the dualism of the monarchy made it weak. The council of nobles, called the *Gerusia*, consisted of twenty eight nobles over the age of sixty. This council prepared

[1] Dr. Frazer (*Lectures on the Early History of Kingship*) thinks that they developed from the Chief Magician who was supposed to control the welfare of the tribe.

matters for the assembly and disposed of criminal cases. All citizens over the age of thirty met in the assembly called the *Apella*. The most important function of this assembly was to elect five magistrates called the *Ephors*. Any Spartan could be elected by lot to this office. The *Ephors* carried on the executive government. They presided over the assembly and perhaps the council, too and in both bodies they alone had the power of the initiative. They even had the power of trying the king for misconduct. They had jurisdiction in civil cases of the citizens and in the criminal cases of the subject population.

The Spartans formed a small minority, governing a very numerous subject population who were called the *Helots*. Hence, there was an iron system of Spartan discipline to keep down the *Helots*. All citizens were subjected to a system of drill from the age of seven. At the age of thirty, the Spartan became a citizen ; but, the drill continued till the age of sixty. All citizens had to join the *Phiditia* or the public mess and were expected to make contributions for it To facilitate such contributions, they were given equal, inalienable lots of land which were cultivated for them by the *Helots*. All other forms of property were forbidden and luxury was also condemned. Nowhere else in the world was the individual so much subordinated to the state. The state regulated even education and marriage. Contrasted with Athens, the citizens became simply military machines. In course of time, inequalities appeared amongst the citizens. There grew up a class of landless citizens. Sparta threw her influence on the side of oligarchy. She formed the head of a group of powers called the Peloponnesian League which was a loose alliance, in which each member had the duty of supplying a military contingent.

The Peloponnesian League and the Athenian Confederacy were not true federations ; but Greece was not unfamiliar with federation. In backward areas, there flourished federations like the Arcadian Federation. It was only in the 3rd century B.C. that this federal idea became really important. Two great federations, the Aetolian League and the Achaean League, developed for the purpose of defence in war against the powerful monarchy of Macedon. The Aetolian League was mainly a union of villages of South Epirus, Thessaly, Locris, Phocis and Boeotia. It was not very important and was ultimately destroyed by Rome. The Achaean League included Corinth, Megara, Sicyon Achaea, and Argos. Thus it was a union of north east Peloponnesian states with headquarters in Achaea. Each state was independent ; but there was a common federal government for foreign policy, war, finance and coinage. The executive consisted of ten *strategi* and a number of subordinate officials who were elected each year by the assembly. The assembly consisted of all the citizens of the states which met perhaps twice a year. Though, in theory, all the people of the federation were citizens, in practice only such citizens came who were able to attend. Thus the meeting assumed

a representative character. Voting was not by individuals but by groups, each city having one vote. There was a standing council of about 120 members to prepare the business for the assembly. There was a federal judiciary to decide disputes between the cities. The federation did not work successfully owing to disunity. The federal government could not always command the obedience of the states. Further, the states were weakened by *stasis*. The annual change of the *strategi* was disadvantageous for continuous policy. Further the two federations were mutually hostile and this weakened them. Ultimately both were conquered by Rome.

Greek political philosophers have been unfavourable to democracy. Greek belief in the close relationship between the form of the constitution and the character of the citizen is seen in the theory that only an ideal state could enable the individual to attain the highest "virtue". Plato in his *Republic* arranges governments in the order of degeneration. According to him, his ideal state would be the rule of the best, those who possessed perfect knowledge and reason. Plato adopted his ideas from Socrates who laid down that the ideal ruler should seek, not his own interest, but the interest of the governed. The ideal state sketched by Plato in his *Republic* is an aristocracy based on the principle of co-option *i.e.*, the government would be run by a small group of philosophers who would be carefully trained for their duties and who would recruit their numbers by picking out youths whom they consider fit for training and give them sound training. The community would be protected by a group of warriors. These also would be subjected to an elaborate system of training, drill and regulation of life. To protect the community from the evil of greed, absolute communism both in family and property is specified.

Plato knew that this ideal state might not be practicable. So, in his *Laws*, he gave his outline of a second best state. Here, the citizens formed a body of landowners. There is no communism ; but all had equal lots of land which they could not alienate. Each landowner was to leave his land to the son whom he most loved and distribute his other sons amongst the childless. Surplus population would be avoided by laws or provided for by colonies. The citizens, who would thus live at leisure on their lands, would also be well trained for fighting and they would possess the right of electing the magistrate and the council which governed them.

Plato recognised a category of states of imperfect knowledge where law is imposed by the state and is obeyed. Monarchy, aristocracy and moderate democracy are in this class. A third category of states is made up of states based on ignorance where no law is obeyed. Tyranny, oligarchy and mobocracy are included in this category. In his *Republic*, Plato gives the following order of states from the highest to the lowest : A constitution like that of Sparta, monarchy, aristocracy, oligarchy, democracy, mobocracy and tyranny. In his

Statesman, he recasts the order as democracy, oligarchy, mobocracy and tyranny.[1]

Aristotle has also a six-fold classification in his *Ethics* which is slightly modified in his *Politics*. His central political idea is that of supremacy in the state by a ruling person or class. A state which secures the "good life" of the citizens (*i.e.*, where the state and the citizens co-operate for all-round improvement of the state as well of the citizens) is normal. Thus, he regards monarchy, aristocracy and moderate democracy or polity as normal. The perversions of these are tyranny, oligarchy and democracy. His order of merit is: monarchy, aristocracy, polity, democracy, oligarchy and tyranny.

Aristotle has also his conception of his ideal state which is very like that of Plato's second best state. The citizens in this would be landowners who would possess supreme deliberative functions meeting as the assembly, and supreme judicial functions meeting as the jury. But Aristotle, who was strongly practical, provided also for a second best state. This would be a polity where citizens of moderate wealth are in power. But Aristotle realised that even this kind of government could not function in the conditions of Greece at that time, because (1) The passions between the extremes of wealth and

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Sir R W. Livingstone (*Selected Passages from Plato*, 1940, selected from Jowett's translation), in his introduction, describes Plato's ideal as "authoritarian" and thus responsible for modern Totalitarianism. R.H.S. Crossman (*Plato Today*) also shares this view. Farrington (*Science and Politics in the Ancient World*, 1939) contests Taylor's view that Plato's rule made no distinction between private and public morality. He says that the *Republic* and the *Laws* show Plato, not as the prophet of all times, but as the master-mind of dictatorship and authority. But many hold that Plato maintained the right of the human soul to free itself from obedience to a state whose law did not coincide with the moral law. Plato's communism may be correctly regarded, not as anticipating modern Communism, but the communistic idea of certain religious orders. Plato's defect was his belief in a tyranny of the wise which would result in an autocratic theocracy.

A "Mixed Government" appealed to Greek philosophers, chiefly as they saw in this the application of the principle of moderation. Thus Aristotle, in his anxiety to avoid the disorders of faction, conceived of a state in which power would be neither with the rich nor the poor but those with moderate wealth. Plato regarded the Spartan constitution favourably, as he found there a combination of the principles of monarchy, aristocracy and democracy. But it is noteworthy that Thucydides considered individual rights better protected in Periclean Athens than in Sparta Polybius regarded Rome as a mixed government. Cicero has the same conception in his *De Republica*. The idea of a "Mixed Government" is wrong, as in every state, one organ has to be supreme in the last resort, though power may be distributed between different organs.

In Aristotle's day, the country-state had not come into existence. Aristotle confined his attention only to the city-state. He was not interested so much in describing the process of political evolution as in the philosophical pursuit of discussing how far the various types of government were conducive to human good Rousseau also considered ten thousand persons as the normal population a state can have. The difficulties of a large population which faced Aristotle and Rousseau have been countered in the modern state by satisfactory schemes of local government.

poverty were too bitter to allow of any such compromise, and (2) the most important states, Athens and Sparta, were committed to the support of democracy and oligarchy respectively, and this would prevent the creation of a polity anywhere in Greece. Curiously enough, Aristotle never thinks of monarchy as a stabilising factor, though this was what ultimately happened.

Plato and Aristotle show a general resemblance in their views on the following points : (1) The city state is considered to be the highest form of organized political society. Aristotle even criticises Plato's second best state on the ground that it would have a group of 5,000 warriors which he considers too large for a city state. (2) The chief purpose of the government should be to train the citizens to the highest attainable degree of human virtue and well-being. For this, a study of philosophy is the best method. (3) This training could yield fruitful results only in the case of a specially chosen class of citizens who must be relieved from all other work, and subjected to an elaborate system of education. Thus, both would prefer the citizens to be a body of landowners who would live at leisure on the produce of their lots of land which would be cultivated by serfs. Hence both exclude farmers, workers and retail traders from citizenship. (4) The male population would be thoroughly trained for war. (5) Slaves are necessary for the community but no Greek was to be a slave. (6) The constitution of Sparta is praised by both. (7) Both give, also, a cycle of political change according to which the government changes by its degeneration. The Aristotelian cycle is in the following order : monarchy, aristocracy, oligarchy, tyranny, polity, democracy and then monarchy again. It is clear that Aristotle was thinking of the conditions in Greece. His conception of oligarchy and democracy has reference, not merely to numbers, but also wealth, and his conception of monarchy was coloured by what he saw in Persia and Macedon. Seeley was the first to note that his classification was inadequate for modern needs. Is England a monarchy or a democracy ?

The criticisms made about democracy by Aristotle—oppression of the rich by taxation, grant of doles, tendency to demand payment for civic services—are true for all time. But it is fair to note that Xenophon and Isocrates, who also condemn democracy, recognise that even slaves enjoyed liberty at Athens.

ROME

After the expulsion of the monarchy in 510, Rome became a republic. The executive consisted of two *Consuls* who were elected each year. They led the army in war, carried on the government and were also the judges. Their power was checked by the duality of the office and by their short term of one year. They could also be impeached after they retired from office. Roman religion was regulated by magistrates called *Pontiffs* and *Augurs*. In times of danger, executive power could be vested in a single magistrate called the *dictator* who, however, held his term only for six months. The

council of nobles called the *Senate* became now very important. The assemblies, *Comitia Curiatia* and *Comitia Centuriata*, now were practically powerless.

The republic was soon convulsed by the struggle between the *Patricians* (*i e.*, the rich nobles) and the *Plebeians* (the poor). Finally the richer *Plebeians* formed with the class of the old nobles a class of new nobles in which rank was obtained, not by having an ancestor of *Patrician* origin, but an ancestor who held office. This new nobility was represented in the *Senate* which became practically supreme. Unlike as in Greece, the struggle between the rich and the poor ended in a compromise. In the course of the struggle, certain laws were passed restricting the share of public land and the number of sheep which could be kept by one individual and insisting also on the employment of a certain proportion of free labour in agricultural estates. These economic provisions remained however a dead letter. But, in the course of the struggle, the constitution became more and more complex.

There was a great increase in the number of magistrates. The *Consular* power, which at first closely resembled the royal power, was now weakened, as parts of this power were distributed to other magistrates. The *Consuls* still remained the heads of the executive and were still leaders of the army. Inside Rome, they possessed the *imperium* limited only by a law, which gave the person condemned to death a right of appeal to the assembly.

In the course of the struggle between the orders, the executive power of the consuls was weakened by powers being transferred to various other officers. Thus judicial power was transferred to the *Praetors*. Financial power was given to the *Quaestors*. The *censors* were entrusted with the duty of keeping up the census of the people, looking after the morals of the community, and filling up vacancies in the *Senate*. The *tribunes*, who were ten in number, had the power of vetoing any action taken by the consul. The *Aediles* looked after the public works.

As regards the assemblies, the *Comitia Curiata* was now purely a religious body. The *Comitia Centuriata* had the power of declaring war and peace, deciding cases of capital punishment and electing the *consuls*, *praetors* and *censors*. Another body—the *Concilium Plebis Tributa*—elected the *tribunes* and passed laws. Later on, this became practically identical with another assembly, the *Comitia Tributa* which also passed law and elected the *quaestors* and *aediles*. The *Senate* increased in power and, from being an advisory council of the *consuls*, it became the supreme organ of administration. Aristotle would have regarded Rome as a polity, because the *Senate* was filled by the magistrates after their term of office and these magistrates had been originally elected by the assemblies.

The *tribunes* elected by the people had unlimited power, though it was negative. But, though Rome advanced towards democracy.

this process was never completed. External dangers necessitated a strong government. The Roman people were prone to patriotic devotion to the state like the Athenians, but, unlike the Athenians, they were inclined to obedience to authority. Unlike Athens, the people themselves did not take up the actual work of government. Further, in the Roman assemblies, the urban tribes were overshadowed at first by the rural tribes who were more conservative. Further, the new nobility maintained their power by managing the assemblies. The power of this oligarchy was helped by the following causes : (1) The executive was split up into a number of offices and was thus weakened. Further, these magistrates belonged to the same class as the nobles. (2) The assemblies were also weak, because they could not initiate proposals or debate them. They could only accept or reject them and the nobles found it easy to manage them. (3) The *Senate* which was the stronghold of this oligarchy showed great administrative experience, as it consisted of ex-magistrates. During this period, it also showed great political capacity, great public spirit and patriotism, hence it was able to control the administration. Even in the field of legislation, it was able to wield influence.

Polybius calls Rome a mixed constitution as, according to him, it was a harmonious combination of monarchy, aristocracy and democracy. But in reality, it was only an oligarchy, though it was, in theory, a democracy and though some considered that it had a balanced equilibrium of powers.

To prove that a flexible constitution need not be unstable and endanger public order and private right, Bryce instances the Roman constitution. Nothing was necessary except the vote of the *Comitia* on the proposition of a competent magistrate accompanied by the silence of the *tribunes* to make vast changes. Yet, the constitution changed little in its legal aspect in the three centuries from the Licinian Laws to Sulla. The explanation is the conservative sentiment of the Romans who valued tradition and the august dignity of their old constitution. Indeed, the knowledge that the constitution can be easily changed may incline the reformers to be moderate and their opposers to be less stubborn. This prevailed, however, only when people were legal minded.

Under the rule of this oligarchy, Rome conquered Italy. She overthrew her great enemy, Carthage. She conquered Sicily, Spain, the Balkans, Asia Minor, Syria and the North African coast. Thus, the city state came to rule over an empire. The policy of Rome towards the subjects was at first liberal. When she conquered Italy, her policy towards the different communities of Italy differed according o the nature of the community. The citizenship of Rome was much more flexible than that of the Greeks. Even in Rome, there was distinction between civil rights like the right of equality before the laws and political rights like the right of membership in the assembly. Rome set up colonies of her citizens in different parts of the empire.

These colonies served as outlets for the poor till 133 B.C , thus postponing the economic conflict between the poor and the rich in Rome. Certain communities possessed the status of Latin colonies. The people of these colonies would exercise the full rights of the Roman citizens only in Rome. Some other communities were given only civil rights (*civitas sine suffragio*). There were also free allies who were internally autonomous but were not Roman citizens. All the communities were cut off from each other. Every community had to furnish a contingent for war ; but internally Rome allowed autonomy. When the empire expanded outside Italy, the provinces were placed under resident governors called *Proconsuls* or *Propraetors*. These provinces had no independent foreign policy and the different communities in the provinces were isolated from contact with one another.

Under this imperialism, the Roman republic became corrupted in course of time. The nobility, which controlled the government, became an exclusive class. The *Senate* was recruited by the *censors* only from them. By 133 B.C., it became rare for any new man to get into this circle. The nobles also became greedy, corrupt and selfish. Along with this moral decay, their rule became inefficient. The provincial governors became oppressive, because they had vast powers. Unlike as in Rome, there was no colleague to check them, and they were beyond the veto of the *tribune*. They had full *imperium*. Since their tenure was limited to one year, they used the opportunity to enrich themselves. They were shielded by the *Senate*, because they belonged to the noble class. A class of capitalists had also developed which also exploited the provinces. The old policy of granting graduated privileges was abandoned. The assemblies now consisted chiefly of the idle mob of Rome which was kept in good humour by bribery and free distribution of corn. Italian agriculture had become ruined by the tribute of corn which flowed from the provinces. Slaves supplanted free labour in the estates. Consequently, the unemployed freemen flocked to Rome and swelled the city mob.

Revolution began in Rome on the agrarian question. Reformers like Tiberius Gracchus tried to break up the monopoly of the public lands by the richer classes. Since the *Senate* was, in theory, only an advisory body of the magistrates and full power rested with the assembly, Gracchus was able to defy the *Senate* basing himself on the assembly ; but his weakness was that the assembly was worthless and unstable. In fact, what Rome needed was a strong central power to effect necessary reforms which neither the selfish oligarchy nor the turbulent mob could bring about. Externally also a strong power was necessary, because the Roman city state had now swollen to an unwieldy size. The provincial governors could not be controlled, and there was much misgovernment. Only a strong central government could give justice and security to the communities of the provinces. So, the transition to an empire was inevitable. This was helped by an important change in the army. The old citizen

army had now given place to a mercenary force which was attached to its general. Thus, military leaders like Marius, Sulla, Pompey and Caesar became more important than the civil authorities. The first step in the development of the authority of the single monarch was the recombination of the several powers of the executive which had been split up before. The development of this authority was complete under Caesar and, from his time, Caesarism came to mean the rule of one man over the state. But it is noteworthy that Caesar who wielded surpreme power did not abolish the old constitution. His power rested on his dictatorship which was granted to him for his life. Under his successor, Augustus, the forms of the republic still continued. Augustus, who held the title of *Princeps*, held the power of all the important magistrates like the *tribunician* power, *proconsular imperium* etc. But, each power was granted to him separately at different times. While he controlled the important provinces, the peaceful provinces were left under the *Senate*, under a system of *Dyarchy*.

Comparison with Athens. (1) In both, after the abolition of the monarchy, there was a period of aristocratic government and gradual advance to democracy. But Rome never became a full democracy. While the *Areopagus* declined in Athens, the *Senate* became more powerful in Rome. (2) Both were based on slave labour. But the condition of slaves in Rome was worse. The use of slave labour in Rome made the freemen an unemployed proletariat. (3) Both developed empires. But it was proved in both cases that an empire was incompatible with the organization of a city state. In Rome, the exploitation of the empire was worse. Further, the development of the Roman empire checked the development of democracy, because the empire necessitated a vigorous ruler to deal with the different problems in the empire. (4) The multitude of magistrates and assemblies in Rome is peculiar ; but this helped the dominance of the *Senate*. While the *Senate* was able to pursue a fixed policy, the use of the lot and the denial of large powers to magistrates led to instability of policy in Athens. (5) Rome, unlike Athens, had a well-developed system of law and an efficient organization of courts.

The democracy in Greece and Rome radically differed from modern democracy. There, all citizens had a direct participation in the work of the assembly. The assembly directed the government, unlike modern times when people do not directly share in executive work. The executive officials were also chosen by lot.

THE ROMAN EMPIRE

On the death of Augustus in 14 A.D., his step-son, Tiberius, took all powers at the same time and permanently into his hands, and his successors followed his example. Thus, the emperor became practically an absolute monarch. By the end of the 1st century, A.D. dyarchy was practically extinct. The *Comitia* disappeared. But the *Senate* continued and there was pretence of consulting it.

till the time of Diocletian. Diocletian in the 3rd century converted his position into one of practical despotism. The important provinces were governed by *legates*. The minor provinces were under *procurators* and all these governors were well controlled by the central government. The army throughout the empire was controlled only by the Caesar. The communities had the right of appealing to the justice of the Caesar. Thus developed a new kind of empire which lived for four centuries. At its height, it included forty provinces. It was well governed by an elaborate bureaucracy. It was not till the rise of Prussia that any state had the efficiently organized administrative system which Rome perfected. A good system of roads connected the empire. Security throughout was kept up by the Roman Peace (*Pax Romana*). There was common coinage and a common system of law. In all the western provinces, Latin became the common language but the east retained Greek and, here, the old Hellenistic civilization based on city life was recognised[1].

Rome under her emperors reached new heights of splendour. A well developed governmental organization was functioning. Tax-farming practised under the republic was abolished and official tax-collectors were appointed. The lawyers laid the foundation of a vast imperial legal code. The numerous provinces had able governors. The younger Pliny was the governor of Bithynia under Trajan. Under Augustus, we find a state postal service and preparation of census of wealth and population. The army in peace time had to build aqueducts, bridges etc., in the empire. A Roman citizen could not be punished without a legal trial before Roman tribunals. But Rome was no longer Roman or Italian. It was cosmopolitan. The army was drafted from many races. The emperor adopted gorgeous dress like that of the Sassanian kings of Persia, and the conception of his divinity as a manifestation of the Sun god illustrates this eastern influence further. The city state and its popular assembly had given way to an imperial despotism. The old division between city and city disappeared.

Like ancient states the Roman Empire rested on slavery, though imperial laws tried to improve the condition of slaves. Regarding workers, they got free corn, free entertainment and free elementary education. Each class of workers had its own trade union which, besides looking after their wages, served also as a provident society. As in Greece, merchants and artisans were grouped into these guilds, each particular craft having a separate guild.

The Roman Empire had one law, one citizenship, an effective police, excellent communications by roads and a common administration. Local customs were respected when they did not conflict with Roman interests. But the emperors were despots. Taxation was

[1] Toynbee in his *A Study of History* 6 vols. 1939) shows that at the beginning of the 4th century, Rome had no real rival. Roman power was extended in Europe, Asia and Africa. Gibbon, like Mommsen, regarded this period as the happiest humanity had ever known.

heavy. He passed legislation and decided the appointment of all magistrates. His *imperium* overrode all other laws. The army was under his control.

After the death of Marcus Aurelius, the inner decay of the empire was clear. Agriculture had begun to decline even under the republic and this decline was accelerated. Lands were held by magnates in big estates (*Villas*) and the farmers became legally bound hereditarily to work for them. They became the *Coloni*. Though actual slaves were not many, the *Coloni* were in a depressed condition. Rome and other cities became filled with unemployed population dependent on the state. Responsible citizenship was passing away. The industrial life of cities also declined. Owing to the debasement of the coinage, the *denarius* steadily lost in value. The army had to be unpaid or paid in grain or land. The Roman citizen was scarcely found in it and it was largely made up of "Barbarians". The fall of Rome was inevitable.

There were other grave defects in the Roman Empire. (1) To the last, the emperor was only a citizen who had been invested with exceptional powers for certain special causes. In theory, the office was elective and there was no law of succession. After the extinction of the line of Augustus, military leaders began to fight for the throne. This danger was increased because the emperor had a body guard (*Praetorian Guard*) which often supported these military adventurers. So, internal confusion and civil war began. Diocletian disbanded the *Praetorian Guard*. He also reorganized the Empire which had become too unwieldy. So, he divided it into two parts : (*i*) The West ruled by an Augustus stationed in Italy helped by a Caesar in Gaul. (*ii*) The East ruled by an Augustus stationed on the Propontis helped by a Caesar in Illyricum. Diocletian also tried to regulate the succession. On the death of the Augustus, the Caesar was to succeed to the post. This attempt failed, as the provincial armies supported their own generals in the contest for the imperial throne. (2) Since the emperor's will was law, everything depended on his personality and, under weak emperors, the central government collapsed. (3) Roman character declined. This degeneration is seen in the fact that no great writer succeeded Tacitus or Juvenal. (4) The empire began to suffer from the raids of "barbarian" races from beyond the frontiers. Under these conditions, the empire declined in the West. Only that part of the empire which was in the East continued, centered in Constantinople, the new capital set up by Emperor Constantine in the 4th century.

How well Rome succeeded in creating a strong imperial organization is seen in the fact that her rule lasted for five centuries in the West and fifteen centuries in the East. Even though the empire declined, it left as its legacy the ideal of a world empire. The greater part of Europe had been one area for long. Further, under Constantine, Christianity became the religion of Rome. The Christian church survived the fall of Rome and influenced the conquerors. Roman

law and Roman methods of administration formed also important legacies for the future. The laws of Rome were not collected till the time of Emperor Justinian (527-565). From now, Roman Law became an important force influencing Europe. The legal system of the "barbarians" was crude, being based on compurgation and ordeal. Another important legacy was the Empire in the East which continued under the name of the Byzantine Empire.

The Roman Empire could thus be compared in the British Empire. (1) Both were extensive and spread over different continents. (2) Both empires kept up order and security. The *Pax Romana* may be compared to the *Pax Britannica*. (3) Both peoples were conservative and both were strongly practical, not led away by theoretical considerations. (4) Both developed important systems of law. The Roman Law may be compared to the Common Law of England. The contrasts are also striking. (1) The Roman city-state could not rule the empire. Enfranchisement of the subject people was useless in a form of go ernment based on the city-state. But Britain was a country-state which could promote self government in the various parts of the empire and thus combined empire with liberty. (2) Unlike Rome, the British Empire was not based on slave labour. (3) Unlike the Roman Empire, the British Empire was mainly a naval empire.

It was in the empires of Egypt and Babylon that finance was first organized. Taxation appears, according to the definition of Bastable (*Public Finance*), "as a compulsory contribution of wealth of a person or a body of persons for the service of the public powers". Greece had a well-developed financial system. Taxes included customs, market dues and duties on resident aliens. There were court-fees and fines. In Athens, the bulk of non-tax revenue came from the state-monopolised silver mines at Laurium. Special contributions were also collected in Athens from the wealthiest citizens to meet the expenses of competitions in athletics or fine arts and of state banquets. Rome collected customs duties and a property tax. She also had an important source of revenue in the tributes from the conquered provincials. Unlike the Pharoahs of the period of the Egyptian Pyramids, the Greeks and the Romans made use of tax-farming.

Law in the Ancient European World.

Some writers have contrasted the idea of the *laissez faire* state of the nineteenth century with the conception of minute interference with the lives of the citizens favoured by Greek philosophers.[1]

[1] They did not conceive of the individual and the state as apart. Man can fulfil his destiny only as a member of the state Hence, there was no conception of individual rights. The state being regarded as of divine origin, existing in itself and of itself, it was considered all in all. The Romans followed Greek theory (*e.g.*, Cicero); but, in practice, they distinguished between religion and law. Law was regarded as created by the state. Though religion was not divorced from politics, both the Greeks and the Romans gave a definite place to human will in politics.

Sidgwick points out that, except in Sparta, this idea was not so evident in practice. In Athens, for example, there was little interference with individual liberty. On the other hand, certain matters like religion, now outside state purview, were within the control of the state. Thus, Athens punished impiety as in the case of Socrates. Aristotle includes priests amongst the officials of the state. No distinction was made in the Ancient World between religion, custom, and law. Private and public law was not well distinguished, except in Rome. The Romans gave the state a purely legal organization as a *Res Publica* in practice. But, while Rome alone viewed the state as the creator of law, in other cases like the Germanic Tribes, the function of the state was only to enforce the law already embodied in the customs of the people. Even in Rome, there was no conception of individual liberty.

Classification of the business of the government was different. In Greece, the functions were : (1) Deliberative (deciding war and peace, legislation and finance) ; (2) Magisterial (looking after the administration) ; (3) Judicial. In Aristotle's account of deliberative functions, law-making plays a subordinate part.

Deliberate legislation was unimportant in ancient times. As a matter of fact, there is no separation of powers. Custom, unwritten but supposed to be known to the ruling classes, dictated the life of the community. The state is more concerned with judicial power, not legislative. Even in the primitive village councils, judicial function is the most important. Even when written codes appear, there was no idea that law was something which a government can alter indefinitely. Greece did not go beyond this conception. Even Aristotle was against constant change of law. The Athenian Assembly, protected itself against altering the law by the procedure of *Graphe Paranomon* which condemned to death sponsors of such changes.

Unwritten customary law dictated the life of the community. The law was not uniform at all for all. Thus, there were special privileges for nobles and priests and special disabilities for women and slaves. Justice was private, the state being only an arbiter to decide disputes in custom. It is only later that special experts in law became a specialised body of judges. The assembly in Athens had executive and judicial powers. The *Archons* of Athens were administrative officials who also exercised judicial functions. The Roman magistrates also combined administrative and judicial functions. They legislated in edicts. The *Senate* had both legislative and judicial functions. The *Comitia* had both executive and judicial duties.

Methods of trial included superstitious methods like ordeal, and punishments were barbarous, *e.g.*, torture. Capital punishment is a surviving relic of this old penal system.

It was long believed that Greek mind was not prone to jurisprudence and it was the speciality of the Romans. But Barker remarks (*Greek Political Theory*) that "Roman Law, like Roman Art and Literature, was largely the gift of the Greeks." Still, as MacIver points out, Greek Law was not consistent. Arbitrary and irrelevant considerations like appeals to sentiment or political bias were introduced in arguments before the courts. The law also was not universal, as the protection of the law was a privilege confined to the citizens.

The sway of immemorial custom gave place under the Romans to laws issued by the state. The first stage was those parts of the old customs which had to be consciously enforced and codified in the Law of the Twelve Tables (451 B.C.). Like the Laws of Moses and the Code of Hammurabi,[1] the Twelve Tables still make no distinction between religious injunctions, moral observance and legal enactments.

Still, the Twelve Tables were not merely a record of unwritten custom, but contained certain changes. The assemblies exercised legislative power. But the most important expansion of Roman law came from judicial interpretation. The Twelve Tables became the basis of Roman jurisprudence and the interpretations of these by *pontiffs* bound all the courts. When the *praetor* was appointed, this interpretation expanded. At the beginning of his year of office, he published an edict announcing the new rules of judicial administration he would follow. These *praetorian* edicts modified the law by introducing elements of equity. The "responses" given by the *pontiffs* and answers given by jurisconsults developed the process of interpretation. There was a class of jurists who developed under the empire and gave opinions on imperial legislation.

This process of expansion was helped by the development of the *Jus Gentium* While the *Praetor Urbanus* applied the old civil law to the Roman citizens, the *Praetor Perigrinus* (first appointed by the middle of the 3rd century B.C.) had to administer justice to the several foreigners in Rome or between Romans and foreigners. Since he could not apply the civil law to these cases, he evolved the *Jus Gentium* (Law of Nations) based on commonsense and abstract justice. Maine considers this law as the common ingredients in the custom of different Italian tribes. He thinks that the Romans, who regarded it as foreign law, preferred to apply it to these foreigners than to apply their own *Jus Civile*. By the end of the republic, this law had grown to considerable dimensions. He says that later the Romans saw in the *Jus Gentium* elements of natural or abstract justice, and so came to regard it as a law of nature universally applicable. Far from being inferior, it was extolled as worthy of inclusion in the jurisprudence of all peoples. This conception owed

[1] This Code, oldest in the world, regulates marriage relations and insists on justice to the poor, but contains the old penal principle of "an eye for an eye".

much to Stoicism which became very popular in Rome. The Stoics held that there was a law which Nature herself dictates. Nature included both the physical and moral universe. The term was extended by Greek philosophers to include human society. "To live according to nature" came to be the ideal. The dictates of this law of nature could be discovered by exercise of human reason, and this law promotes the common good of all humanity. This *Jus Naturali* was identified with the *Jus Gentium* in the last days of the republic. This formed the great agency for the later changes in the Roman Law. Distinction between Roman citizens and citizens in Italy disappeared gradually. Later, distinction from the provincials also vanished. Emperor Caracella gave Roman citizenship to all in the empire. Along with Roman citizenship went also Roman Law, and the distinction between *Jus Civile* and *Jus Gentium* disappeared.

Maine's view regarding the *Jus Gentium* is criticised on the ground that the source he assigns to it is too narrow. It could be derived also from Greek and Carthaginian custom and could also include rules adopted from the *Jus Civile*. It is also held that the Roman lawyers, proud of their *Jus Civile*, could never have placed the *Jus Gentium* on a higher basis. So, some suggest that even the *Jus Gentium* was really composed of principles of Roman law which the *Paetor Peragrinus* selected as fit for application to foreigners, because they were free from technicalities and showed general similarity to the laws of Italian communities. This *Jus Gentium* came to be identified with *Jus Naturali*. But this was not the reason for its being admired because, being really Roman in origin, it was always acceptable to Roman lawyers and they saw in it simplicity and harmony. Maine thinks that in a conservative time as in that period, it enabled lawyers to introduce changes in law by gradual approximation to the higher standard of the *Jus Naturali*. But, as Sidgwick points out, the *Jus Naturali* remained an ideal standard to which positive law should conform, but till it was embodied in a particular law it had no legal validity.

Bryce (*Studies in History and Jurisprudence* Vol. 2.) beautifully explains the development of the conception of *Jus Naturali*. "Looking round the animate (and now also with a clearer eye on the inanimate) world, philosophers feel the need of finding a cause for the regularity they observed in the working of physical forces and in the growth of living creatures upon settled and uniform lines. Then, they figure to themselves a sort of immanent and irresistible force in things themselves, which has stamped its will or tendency upon the movements and processes of the material universe and which governs inanimate and the animate world, animals and man, on somewhat similar principles, aiming at somewhat similar ends .....When they apply this method of enquiry to man regarded not as an animal but as a rational being, they find in him complex faculties and impulses working towards certain ends, ends which, despite infinite differences of detail, are substantially the same for all men.....Thus, that central and supreme power which in the material universe has been called

Nature comes to be called in man Reason[1].....Thus, the conception of Nature .....includes two elements (1) Uniformity.....(2) Force and control..... It is due to an imagined analogy between an ordered community whose members obey rules made for them by a governing authority and the ordered universe, every part of whose machinery works with a regularity which suggests rational direction by an irresistible Force ..... Nature, therefore, is on this view, a ruling power in social and political phenomena as well as those of material growth and of moral development ..... This law of Nature, being the work of Nature, is not only wider in its area, but also of earlier origin "than human laws which differ from community to community", for they belong to the human race as a whole and hence deemed to be higher in moral authority." Bryce goes on to point out that there was a notion as old as Epicurus that there is a close connection between the Law of Nature and the Common Good.

Bryce thinks that the *Jus Gentium* was a body of rules and a system of legal procedure which, while it resembled the Roman Civil Law in several respects (because the Romans adopted general principles of justice which they found in the laws of the other communities and their own), was less technical and "more consonant to the practical convenience and general understanding of mankind."

Bryce refers to the identification of the *Jus Gentium* and *Jus Naturali* thus : "The theory of the Law of Nature, suggested by Heraclitus and Socrates, preached more actively by Zeno and Chrysippus, has been much discussed and widely diffused during the centuries between Aristotle and Cicero." Cicero drew a distinction between the Law of Nature which is eternal and of divine origin and the *Jus Gentium* which was part of positive law. The influence of the *Jus Gentium* increased in the post-Augustan Age owing to sceptics turning to philosophy in their disbelief of the old faith and the growth of the Roman empire leading to the idea of a community of all mankind. The identity between *Jus Centium* and *Jus Naturali*, assumed by jurists as early as the time of Hadrian, is clear in the Institutes of Justinian. "The blending of the notion of the Natural Law as the ethical standard of conduct and the ideal of good legislation with the notion of the law formed by the usages and approved by the commonsense of all nations as embodying what was practically useful and convenient satisfied both the philosophical and the historical instincts of the jurist."

Bryce, however, takes pains to point out that this identification was never complete, *e.g.*, *Jus Gentium* tolerated slavery which was contrary to Nature. Further, the "Law of Nature" contemplated by the jurists had no connection with any "state of nature".[2] The law

[1] Reason directs all human faculties in such a way that, when they are rightfully developed, the man is obeying his true nature. "To live according to nature" is at once his duty and his happiness.

[2] Unlike Plato and Aristotle who regarded the state as a natural growth, the Sophists regarded the state as opposed to Nature and as the result of a contract.

simply represented to the Romans "that which is conformable to Reason, to the best side of human nature, to an elevated morality, to practical good sense, to general convenience." It is Simple and Rational and Universal as opposed to that which is Artificial and Arbitrary and Local or National and is the expression of the purpose of the deity or of the highest reason of man.[1] The practical Romans never tried "to enforce by law duties best left to purely moral sanctions."

In the reign of Justinian, the codification of the law (planned by Julius Caesar and attempted by Theodosius II) was completed. When we compare this with the old Twelve Tables, we find (1) the old jurisdiction of the *Pater Familias* over the family has shrunk before state jurisdiction. (2) Antiquated forms disappear and the law is simplified and rationalised, *e.g.*, inheritance, contract etc. (3) Law is classified into divisions like Civil and Criminal or Public and Private. Till now, there were several inconsistencies and contradictions which prevented proper administration of justice. Justinian appointed a commission which harmonised and codified the laws. This code was called *Codex Justinian.* A treatise on the general principles of the law was also prepared, called the Institutes of Justinian. The law developed further after him through imperial legislation up to 1453, *e.g.*, the *Basilica* of Leo, the Philosopher, which is essentially based of Justinian's code.

Gradually, Roman Law, which was unified and systematised, prevailed against the Teutonic customs. This was aided by (1) Latin becoming the medium of education throughout Europe, (2) increasing study of Roman Law in Europe. Some elements of Teutonic Law were also fused with Roman law and this became the basis for European law.

THE GREAT EMPIRES OF THE EAST

In the fertile river valleys of the Ganges, the Nile, the Euphrates, the Tigris and the Yang-tse-kiang, great empires developed in the past. Examples of these are the great empires which developed in Egypt, Babylon, Assyria etc. The Persian empire followed the Babylonian empire. The Mauryan empire was the earliest of the great empires in India. The Chinese empire had also an ancient origin. Similar great empires flourished later on in Mexico and Peru. Warm climate and abundant food in these areas led to the growth of a large population and many of these empires often formed big aggregates of different peoples. The emperor was practically regarded as a god. The monarch, who was a despot, recognised the restrictions of religion

[1] The Law of Nature was "a system of rights and obligations which are objectively valid for all men" in the sense that they are independent of our choosing or avoiding. A state of Nature, though logically prior to the Law of Nature, was historically later as a topic for speculative discussion." (Lord—*Principles of Politics*). There were different views on the state of Nature, according to the writer's fundamental assumptions concerning human nature.

and current morality. Though his power was not limited by the rights of the subjects, it was limited in practice by custom and religion. The huge size of the empire led to the development of viceroyalties and the growth of a well-developed bureaucracy. We find an excellent illustration of the working of this bureaucracy in the description of the government of the Mauryan empire in India, which has come down to us in Kautilya's *Artha Sastra*. Class organization was well developed and there grew up a specialised priestly class which possessed great power. In many empires, the lower classes were practically servile. The emperors were not barbarous. The Code of Hammurabi in Babylon shows a highly organized and prosperous society. Though there was great advance of culture in all these empires, in course of time, stagnation developed in social life. The empires tended to break up gradually owing to the intrigues of provincial governors and disputed succession to the throne.

There was also a few maritime empires of which the most important example was the Aegean Empire which had its centre in Crete. Unlike the land empires, the mainspring of life in the maritime empire was commerce. Hence, if this commerce perished, the empire also broke up. Unlike the land empire, where the people tended to be conservative, in the maritime empire where seamen formed the most important class there was a general spirit of enterprise.

Another maritime empire was that of Carthage. The Phoenicians, located on the shores of the Mediterranean between Egypt and Mesopotamia, a situation favourable for trade, set up the earliest historical colonies of which the most important was Carthage. Carthage was a city-state, but ruled by an oligarchy. Two Suffetes carried on the government. There was a senate of three hundred members. But all its power passed to a committee of 104. The assembly was unimportant, as the citizens, absorbed in commerce, left the government to the merchant princes who also used corruption to control the assembly. It became important only under the leadership of the Barcids later on. Like Athens, Carthage held an empire whose subject communities did not like her rule. Ultimately, Rome destroyed the state.

ANCIENT INDIA

At the time of the Buddha, North India was divided into various states. But, later on, the Mauryan Empire had developed here. As Radhakumud Mookerjee points out in his *Local Government in Ancient India*, the state was not a centralised despotism, but an elastic association of a central government with largely autonomous local communities. It was not uni-central but multi-central. Even according to Hindu theory, decentralisation is the accepted order. Megasthenes, the Greek ambassador to the Mauryan court, basing himself perhaps on the cities he saw in the Selucid Empire, draws a

distinction in his description of the Mauryan State, between the empire and the "autonomous cities" which exercised independent governmental authority. He must have applied this term only to the subordinate local communities, as no such "autonomous cities" existed in India.

The king maintained great pomp and, even when he went out on hunting excursions, was protected by a body guard of armed men. The empire was divided into provinces governed by viceroys, extended over the greater part of India up to the Mysore area and included modern Afghanistan. Royal power, though unlimited by any constitutional check, was really limited, as in all Hindu states, by the concept of *Dharma* which forced the king to respect the rights of the family, the caste, the village community, the trade guild and the subordinate princes.

The central government was elaborately organized. The *Samaharta* looked after the finances which were carefully organized. The *Sannidhatri* was in charge of public buildings. A Minister of Correspondence issued royal decrees. The *Mantrin* was the Prime Minister, and the *Senapati,* the Commander-in-Chief. The Council of Ministers (*Mantri-parishad*) advised the King. Under these ministers was a bureaucracy of officials. Various officials maintained full registers of property and population, native as well as foreign. There were officials to look after irrigation, land measurement, agriculture, forests, mines, roads and hunting. A superintendent of passports sold them to persons entering or leaving the state. The higher officials, called the *Mahamatras*, included categories like the *Rajukas*, *Rashtrikas* and *Pradesikas*. Subordinate to them were the *Adhyakshas* who were superintendents in charge of particular departments like livestock, horses, elephants, tolls, jails, shipping, ports etc. Subordinate to them were the *Yuktas* and the *Purushas.*

The Mauryan Emperor, Asoka, instructed his officers from the *Rajukas* downward to the *Yuktas* to tour the land often so as to be in touch with the people. The emperor also maintained reporters called *Prativedakas* to inform him about public affairs. Asoka allowed them access to him at all times. There was an elaborate machinery to put down corruption. The frontiers were under *Antapalas* (called in Asoka's inscriptions as *Antamahamatras*). Forts were under *Durgapalas* The army was well organized. Descriptions of Greek writers and the evidence of the Buddhist monuments at Sanchi and Bharhut show that the great cities were well protected by ditches, ramparts and battlements.

The government anticipated several institutions of modern times, long before European countries came to know of them, *e.g.*, departmental organizations, census returns, use of a secret service etc. The administrative work included most of the activities of modern governments. Education was encouraged by grants of land to learned men. Agriculture was helped by great irrigation works. Trade and industry was fostered by roads, rest houses, harbours and

ports, canals and help to foreigners. Mines were generally worked by the state. The state provided medical aid in hospitals, had a system of famine relief and fire protection and regulated gambling and drink. Asoka, under whom the empire reached its height, used the whole machinery of the state to educate his people in the path of righteousness.

There was an elaborate legal procedure. Witnesses had to take oaths according to a particular formula, and perjury was punished. The legal rate of interest was about 15%. The government exercised great control over the details of the life of the people including moral and social spheres. Punishments included mutilation and death in many forms ; but mutilation could sometimes be compounded for by fines. The severe criminal law lessened crime. At the same time, the state respected the internal autonomy of subject states, the communities of the villages and towns and the guilds of trade and industry. Megasthenes describes the municipal commission of Pataliputra (the capital) which worked in six sections of five members each, each looking after a particular function. Perhaps, all large cities had a similar organization. The villages had their own *panchayats.*

The next great Empire, the Gupta Empire, which grew up in the 4th century A.D., was not so extensive. The king had his council (the *Sabha*). The Allahabad inscription of Samudra Gupta refers to the delight of the *Sabhyas* (members of the *Sabha*) at the selection of Samudra Gupta to the throne. But, the *Sabha* seems to have been purely advisory. The administrative system continued on elaborate lines. Seals and inscriptions reveal a highly organized civil and military service. Dr. Saletore shows that the efficiency of the government was based on an accurate system of accounts and an effective organization of the fiscal resources. As in all Hindu states, village officials formed a recognized element in the administration. Some of the Gupta seals refer to the working of the village committees (*Panchayats*). The king also consulted corporations of bankers and merchants. Literary works show that queens were often influential in the state.

The Chola Empire of South India which grew up in the 10th century A. D. was divided at its height into many provinces. Evidence of inscriptions shows a systematised administration. Royal orders were carefully registered by officials headed by the *Olainayakam.* Subordinate officials, called the *Adhikaris,* supervised the administration. But the most remarkable institution of the empire was the village assembly which transacted all important affairs through committees chosen by election and lot. Membership in these was rotated so that all eligible villagers could share in the administration of the village.

A peculiar development in Ancient India was the development of a caste system by which society was separated into a series of hereditary occupational classes. In the West, a similar tendency

appeared in the Middle Ages. But the celibacy of the clergy checked the growth of a hereditary priesthood. The caste system helped to preserve learning amongst the highest caste of Brahmans and fostered manual skill amongst the castes of craftsmen by supplying a hereditary professional skill and training. But it discouraged initiative, as nobody could rise out of his caste. Higher castes disdained manual labour and became proud and privileged. The classes outside the castes (outcastes) were oppressed. Custom and tradition hampered personal enterprise.

Except during the periods of great empires like the Mauryan Empire, India was divided amongst many independent states whose chronic disunity and mutual feuds weakened all of them. This made possible the conquest of a large part of India, by Muslim invaders who came from beyond the north-west in the eleventh century.

The village community[1] must have been coeval with the settlement of the Aryans in the early Vedic period. Its size differed from place to place Owing to difficulties of communication, it was a self-sufficient and self-sufficing community. It might have originated in any one of the following ways : (1) Certain people might have co-operated to clear the land and lived there in a group. Maine (*Ancient Law*) conceived the community, hence, as a body of co-proprietors of the land. (2) Baden Powell has drawn attention to another form of the community consisting of disconnected families who individually held separate holdings. Baden Powell believes that the first type is a later development, as Manu knows only the second type. The joint village of the first type might have grown up in three ways : (1) A particular person might have got the village as a grant from the king, and his descendants might jointly inherit it. Dr. Mathai refers to the rise of such a community in the thirteenth century. (Ch. I, *Village Government in British India*). (2) A revenue farmer might have become the owner of the village and his descendants could jointly inherit it. (3) It might have been created by a settlement of conquerors or colonists, *e.g.*, the *Jats*. The former type of community was found in Uttar Pradesh and the Punjab, and the latter in other parts of India, except Bengal and Madhya Pradesh where it existed originally.[2]

Whatever the type, the village community was practically independent and looked after all its affairs. Its hereditary police and revenue officials remunerated by free holdings of land or payments in

[1] Baden Powell—*The Indian Village Community* (1899). His *Land Systems of British India* (3 vols., 1892), Book One in volume one, surveys the nature of the different village systems. The first volume deals with Bengal, the second with Mahalwari areas and the third with Ryotwari and allied systems Also Baden Pawell - *A Short Account of Land Revenue and its Administration in British India* (with map). Dr. Radhakamal Mookerji (*Land problems of India*) follows Vinogradolf's method in tracing the origin of the Indian village. Maine - *Village Communities in the East and West* (3rd ed., 1876. Course of lectures delivered in the Universities of Oxford and Calcutta).

[2] Radhakamal Mukerjee in *Land Problems of India*, 1933 studies the probable origin of these tenures.

kind kept order, realised the taxes and paid them to the representative of the ruling power and decided disputes. The village artisans were also hereditary and included carpenters, potters, washermen, black-smiths, goldsmiths etc. These had their own plots of land (held rent-free or at a reduced rent) and were also given a fixed share of each year's produce in return for their services. They were employed by the village itself. The duties of these village servants and their payment differed from place to place.[1] This village machinery continued despite changes of government and preserved the civilisation of India by its compactness which resisted outside troubles.

Though the villagers were generally bound by a tie of common ancestry, each member had his own share of the land. There were serfs who worked on the land. The headmen chosen by the community had a council of village elders (*grama-vriddhas*) to help him. In the management of the affairs of the village, the community acted as a body. There was a hereditary accountant to maintain the records of cultivation. So long as the peasants cultivated the land and paid the revenue to the state, there was no central interference. But failure to do so was considered revolt which should be punished. The headmen would be responsible for the payment of the full revenue of the village. He used to distribute it amongst the peasants according to custom.[2]

India was, mainly, a land of villages. But there were also some towns. Some of them, like Banaras, rose as pilgrim centres. Some, like Kaverippattinam in the Chola country, developed as trading ports. Some, like Pataliputra or Kanauj, became important as centres of the royal court. When such causative factors declined, the towns also declined, *e.g.*, Gaya declined with the decline of Buddhism.

[1]Trade was often hampered by disorder and bad communications. So, prices differed from place to place. Custom regulated prices and wages.

[2]Smith (*Early History of India*) holds that the "native law has ordinarily recognised agricultural land as being crown property". Jayaswal (*Hindu Polity*) disagrees. Prematha Nath Banerjee (*Public Administration in Ancient India*) thinks that the king was never regarded as the owner of the land. V. Rangacharya in an article in the *K.V. Rangaswamy Ayyangar Commemoration Volume* holds that land was not the property of the king, but of the people. The *Cambridge Indian History* believes that the idea of the later law books that king was the owner of the land is not found in the Vedic period The land belonged to the tribes, but the king could grant the right of receiving dues from the lands to his nobles and retainers. By the Buddhist period, we hear of the Rajabhogga in which the holder collected all governmental dues in the land granted to him. But these were all fixed by the state and the holder could not change them. F.W. Thomas in Vol. I. of the *Cambridge History of India* holds that the ultimate property appertained to the king in this sense that, in default of revenue, he could replace the cultivator. The evidence of the Arthasastra is quoted to show that the cultivator could alienate his land and, at the same time, that the king had the right to replace him if he defaulted in revenue. Dr. M.H. Gopal (*Manuyan Public Finance*, 1935) would call this "Double ownership". [*P.T.C.*

CHINA

By the period of the Shang dynasty (1750-1125 B. C.), the land had become highly civilized. This dynasty was followed by the Chu dynasty. Numerous dynasties followed. The emperor ruled by divine descent, but was bound by the philosophy of Confucius to give just government to his people. The chief officials were recruited by competitive examination and a body called the censors watched and criticised their actions. Each of the eighteen provinces of the "Middle Kingdom" was governed by a viceroy chosen by the emperor. But the governmental organization was loose. The viceroys enjoyed great power. The town and village communities were practically self-governing, being simply enlarged family groups. Under the Tsin dynasty feudalism spread.

The height of power of the empire was reached under the Han dynasty (200 B.C.—200 A.D.) which was contemporary with the Roman Empire, and the frontier extended into Central Asia and borders of India. By 1212, Chinghiz Khan invaded China and set up Mongol rule which ended in 1368 with the rule of the Ming Dynasty. In 1642, the Manchus invaded China and the land came under the Manchu dynasty from 1644. The greatest of this line was Ch'ien Lung (1736-96). After him, there was disorder and confusion.

[*Contd from p. 39.*

Moreland (*Agrarian System of Muslim India*) holds that under the Muslim rulers the position was the same as under Hindu rulers. But Qureshi (*Administration of the Sultanate of Delhi*) believes that the Muslim state recognised the peasant as the owner.

Sir Benjamin Lindsay (in an essay in *India and the West* ed. by O'Malley, 1941) holds that there was a partnership between the state and the cultivator. Sir T. Morison (*Industrial Organization of an Indian Prince*) holds that the Indian system is a compromise between the theory of Individual Absolute property in land and the theory of State Ownership and calls it restricted private ownership.

Baden Powell asserts (Article in *Asiatic Quarterly Review*, July, 1894), that in the Zamindary areas and joint-village areas, the British Government recognised that ownership was vested in the landholders and that in the Ryotwari areas the State held a residuary right in land which was waste or ownerless, but in other cases had no power to dispossess cultivators except for non-payment of the kist. In his *Land Revenue in British India* he concludes that, while land revenue is a thing *per se*, it operates as a tax on agricultural income. The Taxation Enquiry Committee of 1926 was unable to reach a definite conclusion as to whether land revenue was a tax or rent, and while inclining to the former view, held that it has "something of the characteristics of rent as well as a tax".

CHAPTER II

THE MEDIAEVAL WORLD

THE country-state had become the rule in the Middle Ages. Though the idea of a common empire survived from the period of the Roman Empire, no common empire developed. Unlike as in the city-state, monarchy became the common form of government. In Western Europe by the fifth century A.D. the "barbarian" tribes had carved out states in France, Germany and England. There developed a fusion of Roman and Teutonic customs. Only in the east, the Byzantine empire represented a continuation of the old empire down to its destruction by the Turks in 1453.

The first important state to develop was the Frankish Empire.

THE FRANKISH MONARCHY

From 481 to 918, it is the history of the Franks that forms the central thread in European history. The Frankish state was the first real state to arise from the general disorder which followed the downfall of the Roman Empire. We first hear of Frankish raids across the Seine about 250 A.D. Their conquest of Gaul destroyed for ever the Roman authority set up there five centuries ago by Julius Caesar. The Frankish chief, Clovis, soon extended his power over the greater part of Gaul. The old Keltic peasantry of the land continued to be serfs ; but, in course of time, they intermixed with the Franks. Gradually, the language and character of the Franks became modified by this contact. The successors of Clovis extended their power over almost all the lands now included in France, the Netherlands, and a large part of Western Germany. Still, there prevailed one and a half centuries of disorder and civil war after Clovis. In this long period, the Franks in Gaul came under the Roman culture prevailing in the area, and thus became differentiated from those Franks in the east who still retained their old German ways. Hence, the eastern part was called Austrasia. This was mainly the Rhineland. The western part, which comprised the land west of the Scheldt and the Meuse, was called Neustria. It became the nucleus of later France. The region in the middle, Burgundy, which comprised the valley of the Rhone, remained distinct. The line of Clovis was called Merovingian (from the name of Merving, an early legendary chief). These kings, in course of time, became feeble and inefficient[1]. An officer called *Major Domus* (a title borrowed from the old Roman regime) became gradually dominant. When the king developed in importance, there was an increase of the royal house-

[1] In organization, the Frankish state lay halfway between the Teutonic form of government found in Anglo-Saxon England and the Roman form of government of the Ostrogothic kingdom of Theodoric in Italy.

hold. It was supervised by the *Major Domus* (or Major of the Palace). This official, because he controlled access to the king, became his political adviser also. The Mayors in Neustria and Burgundy never became important; but, in Austrasia, by 638, on the death of the king Dagobert, the king had lost all importance. It was an age when every dignity became hereditary. The office of *Major Domus* became hereditary in the family of Pippin the Elder who had risen to prominence under Dagobert. By now, the *Major Domus* practically exercised royal authority. Dr. Hodgkin thinks it possible to see in the position of the Mayors of Austrasia the first beginnings of a protest by the Teutonic eastern section of the Franks against the claims of the western king of Neustria to be the head of the Frankish nation. Pippin II, the successor of Pippin, conquered Neustria also and, finally, Pippin III seized the throne in 751. He was the first of the Carolingian line (named after his great son, Charlemagne). As a result of the conquests made by Charlemagne, the Frankish Empire included France, Germany, half of Italy and a corner of Spain. It was established as the one great power west of the Elbe and the Adriatic. It did not include the Scandinavian countries or the British Islands. The Arabs controlled most of Spain. The Eastern Empire ruled over Asia Minor, South Balkans, Sicily, parts of Italy and a large part of the Adriatic coast.

The Eastern Emperor now cared nothing for the west. His activities were almost limited to the east. Further, relations between the Eastern Emperors and the Popes of Rome became bad. Whenever the Eastern Emperor interfered in the west, it was to the disadvantage of the Pope. So, the Pope had a selfish motive in deciding to make Charles Emperor in the West. Memories of the old Roman Empire still lingered in the West. The idea of the Roman Empire had taken deep root in popular imagination. So, the tradition of an empire continued for two centuries. The prevalent idea was that the political unity of Europe made the empire necessary. The people of Rome also wanted to restore their city to its old place of honour. Revival of the empire was possible now, because the Frankish monarchy was now the only great power in the West. Charles, by his series of splendid conquests, had laid the foundation for the renewal of the imperial title in the West. He was now ruling over all Western Europe except Britain and Spain. Further, there was close alliance between the Frankish kings and the Pope. By making Charles emperor, the Pope could rely on his support against his enemies like the republican factions in Rome. In 800, the Pope proclaimed Charles emperor. The new empire was very different from the old Roman Empire and was not strictly a continuation of the old Roman Empire. But the successors of Charlemagne regarded themselves as the successors of Julius Caesar. The men of the Middle Ages also regarded Charles as a direct successor of the Caesars. Note that, at the same time, the Eastern line of the emperors continued. So, from now, there were two emperors claiming to be Caesars. Before now, in theory, the east and the west were con-

sidered only as administrative divisions of a single Roman Empire. As Bryce points out, from now we can speak of a separate Western Empire and a separate Eastern Empire.

Later three legal theories arose to explain the origin of the Western Empire. (1) The imperialists held that the title was the result of the conquests of Charles. This was the true explanation. (2) The Pope believed that, as the successor of the St. Peter, he conferred the crown on Charles. Note that the Pope had actually crowned Charles. But this interpretation developed only later on, when the struggle between the Empire and the Papacy began. (3) The people of Rome claimed that they had revived their old right of electing the emperor, following the tradition of olden times ; but this theory was based on nothing else except the usual acclamation of the mob at the time of the coronation.

The restoration of the Empire in the West was important in the following ways : (1) It greatly increased the power and prestige of Charles. (2) A great political ideal that the emperor had a rightful claim to supremacy in Western Europe was set up. This influenced the history of the following centuries. (3) Though the real strength of the empire lay north of the Alps, its centre was supposed to be Rome.

Hence, Italy and Germany were bound together in a union which was on the whole politically injurious. The German Emperors exhausted themselves in setting up their power in Italy, but in this process they failed to unify Germany under their control.

Charles the Great is regarded as "the heir of an old barbarian monarchy and also the founder of a new empire." His administration was largely guided by the traditional standards which were inherited. But Charles also adapted the old methods to the new political fabric, as H.W.C. Davies says in his *Mediaeval Europe*. Even under the Merovingians, the kingdom was divided into counties. The count had both military and civil duties. Several of these counties were grouped under officers called dukes. The Franks had brought with them the Teutonic institution of elective monarchy, though, in practice, it was restricted to one family. As the Frankish kingdom increased in power, the assembly of freemen must have become less and less frequent, and popular election disappeared. The count ruled over a Pagus and held a court there called *Mallus*. The *Pagus* was sub-divided into hundreds, each under a local official chosen by the count. The count was nominally appointed by the king, but was really a local magnate who was hereditary and who was not much controlled by the king. On the frontier, there were areas called Marks which were under officers called Margraves who were given special privileges and greater power so that they could keep out invaders.

The king's demesnes were managed by bailiffs who rendered accounts to the Seneschal or High Stuward. The Chamberlain was

in charge of the treasury. The Constable looked after the army. The Counts of the Palace exercised judicial functions. The Teutonic tradition of a body of nobles to deliberate with the king on important matters continued and the king must act in consultation with them. Charles abolished several of the duchies and reduced the other dukes to a dependent position. His chief officer was the count who was responsible for local government. To supervise and control the count, special commissioners called Missi Dominici were sent out, generally in pairs, to keep the king in touch with all local affairs. The previous Frankish kings used to send them out occasionally, but Charles made this institution permanent. The central government in the time of Charles became really an autocracy. The emperor retained control of the actual work of government. The general assembly of freemen (*Mayfield*) held each year to approve of important matters had vanished long ago. Owing to the lack of a trained body of officials, Charles had to use in the administration mainly the clergy who rose now to great importance. The clergy were regarded as officers of the state. Though the relations between them and the counts were not well defined, they were supposed to work together harmoniously.

Charles made no attempt to compile a code of laws. But he tried to arrange the various Germanic laws more systematically. Those yet unwritten were reduced to writing. His most important legislation consists of his capitularies—edicts issued by him from time to time in consultation with the nobles. These should not be called properly laws. They form a curious mixture of elements of German law, Roman law and Biblical precepts. Some of them are proclamations. Some are instructions to the *Missi* or replies to their questions. Some are merely notes written down by the emperor expressing his ideas of what the subjects needed in the way of advice in all matters, civil as well as religious. Many of them must have been mere pious opinions. Guizot attempts to classify the capitularies according to their subject-matter, in his *History of Civilisation*. The old customs were supreme and men lived under their own regional custom. The law of the king was only a supplement. Still these capitularies show that Charles ruled his kingdom with extreme solicitude. This feeling of responsibility for his subjects was still further increased after he became Emperor. Charles regarded himself much exalted by this office and he impressed this high and sacred conception of his duty on his own contemporaries. He personaly supervised the government, moving from place to place. The Frankish kings had brought with them their customary laws which were later written down in a number of codes of which the most famous was the Salic law which chiefly consists of regulations about judicial procedure like trial by Ordeal and Wergild.

There was no system of general taxation as in the Roman Empire. The income of Charles came mostly from royal estates, tolls and customs and the forfeited property of criminals. As the fountain of justice, the king derived a large revenue from the fines imposed in the courts of law.

His military system was also based on what prevailed before. There was no regular standing army. The frequency of his wars and the distant nature of these campaigns made it often difficult to use the freemen. Hence, the counts had to supply troops whenever wanted. Military service thus tended to become territorial instead of personal.

As Davies points out, the imperial policy of Charles constituted a preface to the history of the later Middle Ages. His empire was, however, not in any sense a continuation of the old Roman Empire. It did not include North Africa, Britain or Spain ; but it included territories east of the Rhine and north of the Danube which the Romans never had. The old Roman Empire spoke Latin and was governed by Roman law, unlike the German state of Charles. Cities flourished only in the west. The east still consisted of tribes.

The composite character of mediaeval culture is well illustrated by Charles the Great himself. He was, in language, dress and manners a German. In his ideas and government, he was influenced by Rome. In his following a higher code of morality than that prevalent then and in his religious spirit, he was affected by Biblical influence. The vigorous turbulence of the Teutons had been finally tamed by the Roman tradition of discipline and order and the Christian ideas of morality.

Charles was not merely a warrior, but a man of miscellaneous activities. Davies points out that he held the balance between rival forces. An autocrat, at the same time he sought the co-operation of the people. He fostered the growth of territorial feudalism, but also tried to control it. He followed the old policy of military conquest, but gave it a new meaning. He exalted the church, but tried to control the Pope. Though a "barbarian" monarch, he believed in the sacred duty of a Roman Emperor.

The power of the Carolingian monarchy developed owing to (1) a remarkable succession of distinguished rulers, (2) their victories which increased the empire, and (3) the fact that most of their subjects had been used to submission to the old Roman Empire. The principle of hereditary succession spread from private property to the throne and the old election became a farce. Administration became more complex than in the old German tribes and royal power made itself felt through an organised system of officials.

After him, gradually, the Frankish state fell into disorder. Under his weak successors, the *missi* became worse oppressors of the people than the counts themselves. The counts increased in independence and became powerful hereditary magnates like the powerful Counts of Flanders, Poitou, Anjou, Gascony, Paris etc. These nobles indulged in private wars. Unlike the eastern Franks. the Franks of Neustria did not come under any great ruler for a long time like Otto the Great of Germany. So, France suffered under feudal anarchy. The fight between the Carolingians and the powerful Dukes

of Paris (called also Duke of France) went on. Robert and his grandson, Odo[1], Dukes of France, even got the crown, though they were as powerless as the Carolingians whom they supplanted. This disorder continued till 987 when the last Carolingian prince was superseded by Hugh Capet, the Duke of France and the great nephew of Odo. By this time, the Western Frankish kingdom founded by the union of Neustria and Acquitaine included the greater part of the Romance-speaking area. The Latinised Kelts and the Frankish population of Gaul formed France. The Eastern Frankish kingdom comprised all the more Teutonic districts of the empire. This formed Germany. While the rulers of Germany carried on their great quarrel with the Pope, France was destined slowly to develop into a great power.

The feudal State. Society was reconstructed on the basis of the authority of the local landowner over his tenants. Each area had its lord who ruled over it. It is this association of political power with land which is the essential principle of feudalism which developed in the anarchy after Charles the Great.

Society was also rebuilt by the influence of the Christian Church which gave Europe one culture, one faith, one common language in Latin and traditions of Roman administration.

The feudal state had the following characteristics :—

(1) The essential basis was a personal bond of fealty between the lord and his vassal.

(2) Property and offices came to be connected hereditarily with certain families. The unity of the state was only nominal. It had become split up into petty rulerships, and the nobles were all powerful. As Sidgwick points out, there emerged "a society of which the members are bound together in a scale of different ranks, fixed and kept stable by a scale of relation to land." Poor and weak persons "commended" themselves to neighbouring magnates to secure protection and came under their jurisdiction. The mass of the population became serfs who supported the higher classes by their agricultural labour. Feudalism was a system in which all classes had rights and duties. So, the serf was not a slave and had limited customary obligations to the lord.

Feudalism was a necessary stage, as it safeguarded society in that period of anarchy. Being based on contract, it prevented monarchy from becoming despotic, as the king had to respect the rights of the various classes. But it led to the dominance of the nobles who tried to make themselves independent in their localities. By the thirteenth century, as society became more organized, the

[1] Odo was upright and brave. But he was not greater than the other nobles who fought with him.

need of feudalism to hold it together disappeared. The church threw its influence on the side of monarchy and against disorder. The towns also upheld the king as against the nobles. Hence, feudalism declined after the thirteenth century.

Robertson thus condemns the feudal state : "A kingdom dismembered and torn with dissension, where each baron carried on his petty enterprise of revenge or ambition without any common interests to arouse or any common head to conduct its force, was incapable of acting with vigour."

The manor was the economic unit[1]. The normal population consisted of serfs which had to render onerous obligation to the lord. The seigneur had also rights of justice over them. In England and France, serfdom disappeared before the end of the Middle Ages. The peasants in France, even before the French Revolution, held the bulk of the land as tenants or owners, but they still had to render sundry feudal payments to the lord till the French Revolution. Serfdom declined in most part of Germany also by the sixteenth century, though it was formally abolished only in the eighteenth century. But in Central and Eastern Europe the bulk of the people were tied to the soil till the nineteenth century and were worse off than the French peasants in 1789.

The population in the time of Charlemagne has been reckoned as perhaps eight millions. In the fourteenth century, it was not more than twelve millions. Growth of population was kept down by famines and pestilences and through numerous wars.

THE HOLY ROMAN EMPIRE

The history of Germany as a separate kingdom begins with the break up of the empire of Charles the Great. The empire east of the Rhone, called the kingdom of the East Franks, was made up of several tribes of which the East Franks were the most important. These tribes were closely allied in race, language and customs. Still Germany never became a nation. The reason was that while the French king could attend to the work of establishing a strong national state, the rulers of Germany were distracted by their imperial position as emperors. In France, the church strongly supported monarchy ; but, in Germany, the conflict between the emperors and the popes made the church hostile.

Germany did not extend east of the Elbe, beyond which were Slav races. During the reign of Louis, a descendant of Charlemagne, who ruled for sixty years, the East Franks or Franconians, the Saxons, the Bavarians, and the Swabians of this area came to feel that they were distinct from the West Franks. As in France, the nobles seized offices and lands and became hereditary. Six great dukes arose in Thuringia, Franconia, Saxony, Bavaria, Swabia and Lotharingia. The boundaries of these duchies followed tribal

[1] The lord had his demesne land either compact as in England or scattered amongst the holdings of the tenants as in France.

frontiers and hence promoted disunity. The line of the Carolingians in Germany ended in 911. The condition of Europe then was as follows : Five states had developed out of the Carolingian Empire. (1) The kingdom of the West Franks, *i.e.*, France. (2) The kingdom of the East Franks, *i.e.*, Germany. (3) Italy. (4) Upper Bungundy and (5) Lower Burgundy called also Arles or Provence. Germany was ruled by the Saxon Dynasty from 918 to 1002. The greatest of the rulers was Otto the Great (936-73). He suppressed the turbulent dukes and granted the duchies to his nominees or the members of the royal house. He also strengthened the clergy as a kind of check on the nobles. The clergy were well suited for the administration, because they were the best educated, and the rule of clerical celibacy meant they could not found families and thus become ambitious. The result of this policy was that the clergy became an important part of the German nobility which turned against the emperor, later on, when he quarrelled with the Pope.[1]

For purpose of defence, Otto set up several defensive areas on the frontier. In the west, these were called palatinates, and in the north and the east, marks.[2] He pushed on beyond the Elbe and the Slavs beyond were forced to accept his rule and were Christianised by missionaries. New church centres were set up here like the bishopric of Magdeburg. From now, the colonisation of Germany in the east began. This was the only direction where Germany could have expanded because the way to the west was closed. Bohemia and Hungary escaped Germanisation, because Otto's successors were weak.

The close connection between the German monarchy and the clergy made Otto interested in the fortunes of the papacy. Italy had been in chronic disorder ever since the fall of the Roman Empire. The only people who could have unified Italy were the Lombards. These were a Teutonic people, who invaded Italy in the sixth century. The Lombards set up separate states ruled by hereditary dukes ; but, after ten years, they chose a king owing to a war with the Franks. But the Franks destroyed the Lombard kingdom. After Charles, Italy was in disorder, and the popes were instruments of rival noble factions in Rome. Otto was interested, because he did not want that the control of the church should come under factions hostile to him. He was the greatest prince in Western Europe by the Middle of the tenth century. The French king sought his help. The English king was his ally. The Eastern Emperor and the Moors were friendly to him. His court was already the refuge of those who were oppressed by others. So, it was fitting that he should interfere when the Pope applied to him for help. Otto rescued the Pope, and, in return, the Pope bestowed on him the imperial crown. Otto can be

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[1] Bryce—*Holy Roman Empire*, Ch. VIII.

[2] Otto founded the Bavarian East Mark (which later on became Austria).

compared to Charlemagne. Both were the greatest rulers of the time. Both successfully warred with the heathens. Both rendered great services to the church and the Pope. In both cases, the imperial title made their power in Italy legitimate; but the difference was that unlike the cosmopolitan empire of Charlemagne, Otto's empire was till now confined to the Germans. So, the assumption of the imperial title was less justified. Otto himself, while not indifferent to the splendour of the title, had a keen sense of reality. His main ambition was that of a German ruler; but his successors departed from this aim and fell a prey to the temptation of the imperial title. The coronation of Otto marks the foundation of the Holy Roman Empire. It was called holy, because the empire existed in theory to defend the Christian faith. It was called Roman, not because the emperor lived at Rome, but no one of the period could imagine a universal government under any other name. This connection between Germany and Italy formed a great weakness to the emperor and prevented the unity of both countries. But Otto was able to make his power felt. He confirmed the Pope in possession of the territory he had received from the Carolingian emperors. But the Pope had to swear fealty to the emperor and Otto asserted his right to approve the election of the Pope.

The Church and the State. The period between the middle of the 11th century and 12th century was, in the words of the *Cambridge Mediaeval History* "the period, on the one hand, of new movements and ideas —the appearance of new monastic orders, a renaissance of thought and learning, rise of towns and expansion of commerce; on the other hand, of consolidation and centralisation—the organization of the monarchical government of the church, development of monarchical institutions in various countries of Europe, revived study of Roman and Civil law." The conflict between the popes and the emperors filled the 11th and 12th centuries. The increase in the power of the church was largely due to the religious ideal of the middle ages. Only those baptised in the church could go to heaven. Even these must keep in constant communion with the church so that they could keep pure. All had to show "unquestioning acceptance of the twofold revelations of Himself given by God in the scriptures and in the traditions of the Church" (Davies—*Mediaeval Europe*). Since the church claimed the power to be the only body which could interpret the scriptures, this twofold revelation became practically one. There was also the belief that sharing the sacraments of the church was essential for the salvation of man. There was also the belief that evil spirits were always tempting man to fall. So, man had the need of the prayers of the church to invoke the help of God against these spirits.

Mediaeval political theory assumed the existence of a single universal society[1] which, on its lay side, inherited and continued the

[1] This "cosmopolitan ideal" is well described by Carlyle in his *Mediaeval Political Theory*. As Figgis points out (*Churches in the Modern State*), the mediaeval distinction between church and state was not one between two associations, but one between two powers of a single society.

ancient Roman Empire, and on its ecclesiastical side "the incarnation of Christ in a visible church". The same society is at once an empire (with an emperor) and a Church (with a Pope). Pope Gelasius I, at the end of the fifth century, postulated this theory of parallelism between both, each having its own sphere—Ceasar's and Peter's. Pope Leo III held that the two powers—church and state —were both derived from God and were entitled to absolute power in their respective spheres.

The early church held that the "sate of nature" was the ideal state of bliss and innocence. Adam's sin led to the rise of the state as a necessary evil. The church Fathers held that God instituted it and the king was His representative. They recognised the supremacy of the temporal in things temporal and the spiritual in things spiritual. The early church Fathers stressed the duty of obedience to "the powers that be", for civil government was regarded as a divine institution. The church did that in the interests of order against the prevailing chaos. But this theory changed when conflict broke out between the church and the empire. The supporters of the papacy recognised the need of the state exercising its functions, but held that, in doing so, the state, being earthly, must necessarily be subject to the church. Church Fathers like Aquinas now argued that "the Pope alone received his power directly from the Almighty, and the emperor, his authority indirectly through the Pope's hands". The church Fathers also denounced the political power of the state as based on force.

The church claimed greater dignity as being in charge of the Soul which is more important than the Body and held that it had supervising powers of inspection. Pope Boniface VIII declared that both swords were in the hands of the church. This idea of universal dominion appeared in a spiritual form, although, even at the climax of the power of the church, it did not succeed in completely converting the state into a subordinate institution.

The princes asserted that they also derived their power from God and were answerable to Him alone. Dante pleaded for a universal empire as necessary for human welfare. Marsiglio denied the claims of the Pope.

Theocracy need not be despotic. As Bluntschli points out, "The priesthood inspired by God may recognise and respect the law of the community. In this sense, the Jewish Theocracy was republican". He says further that the presence of a personal and territorial tie to Yahweh made the Jewish tribes brothers. Though the Jewish State later became a monarchy, it still continued to be theocratic, priests influencing the government. In the Khalifate also, the king was the high priest.

In the Middle Ages, when the clergy developed as a separate class under the effective control of the papacy, it was inevitable that the church should attempt a complete control over society. In the disorders following the break-up of the Roman Empire, it was the only in-

stitution which remained strong. Absence of a strong government and monopoly of learning increased the power of the clergy. Developing church authority led to the development of church law. By the 12th century, Canon Law was codified by Gratian who was a product of Bologna.[1]

The state was till now working in harmony with the church in several countries ; for example Edgar of England had cordial relations with Dunstan, Archbishop of Canterbury. The church supported the Franks. Still, many churchmen held that the church was logically superior to the state. The function of the state was regarded as only the duty of protecting the church, checking heretics and "providing sound conditions for the functioning of Christian society."

The authority of the church was centralised in the Pope. The Pope, in addition to his spiritual power of controlling the church, claimed also certain temporal powers as essential to his dignity. Thus, he was ruling over Rome and many estates in Italy. In addition, the Pope claimed a general power to exercise authority over the state throughout Europe. This temporal authority was helped from the ninth century by two forged documents which were accepted as real in that uncritical age. (1) A donation of Emperor Constantine purporting to grant sovereignty over Italy and all countries in the West to the Pope. (2) Pseudo-Isidorian decretals purporting to be the decision of the early popes and the church councils edited by Isidore of Seville which proved that the popes of the second and third centuries exercised all the power which later popes claimed, including temporal control of Italy and all the West.[2]

Pope Gregory VII, who represented the papal ideal at its best, denied the theory that the state also represented the kingdom of God on earth. He held that it was based on force and so the church, being based on righteousness, was alone the kingdom of God. The Pope hence must be the absolute ruler. Spiritual things, being eternal, must be superior to temporal things. His supporters declared that the emperor had the duty of protecting the church, but could never control it. On the other hand, the Pope, as the superior power, might even depose a bad ruler. This subordination of temporal to spiritual authority was supported by arguments drawn from the Bible, *e.g.*, I Corinthians 2, 50 ; Jeremiah 3, 10. Parallels were drawn like the superiority of the sun over the moon and the soul over the body, the church being the former. Past history was also drawn upon, for example, the coronation of Charlemagne and Otto by the

[1] William of Ockham, the English Franciscan, questioned the claims of the Pope. Like Marsiglio and Althusius, he urged popular rights. His political writings in six volumes are published by the Manchester University Press from 1940. (Review in *History*, June, 1941.)

[2] Henderson's *Documents of the Middle Ages* contains these documents and all other documents connected with the struggle between the empire and the papacy.

Pope. St. Thomas Aquinas was the strongest exponent of these papal claims[1].

The emperor, while he did not claim to exercise spiritual powers, claimed control over those exercising such powers. Hence, he claimed the power to appoint bishops and summon church councils. His supporters also brought forward arguments drawn from the Bible *e.g.*, the advice of Jesus Christ to render unto Caesar the things which are Caesar's. Examples from past history were also quoted like the grants of territory made by Frankish kings to the popes, which made them vassals, Otto I had appointed popes. Otto III appointed Gerbert, archbishop of Ravenna (the most learned man of the age), as Pope Sylvester II. Important writers like Dante troubled by the political confusion in Italy, argued in favour of the authority of the emperor. Some lofty thinkers held the view that the Pope, as well as the emperor, were commissioned by God to act independently in their own spheres, and that they should co-operate with each other. But this dream did not appeal to either side.

Gregory VII sincerely believed that the world could be saved only through the spiritual power of the church. He was not personally ambitious ; but his conduct as Pope was determined by his lofty ideal. One of his works, *The Dictates,* gives a list of the power which he thought that the Pope should possess. He also believed that the church could take up the leadership of the world only if all the power of the church was concentrated in the hands of one person, the Pope. He emphasised Justitia which meant (1) papal sovereignty over the church, (2) liberation of the clergy from lay control, and (3) Pope's right to judge rulers. According to him, the emperor could never be the Pope's equal.

He insisted that all bishops should take an oath of allegiance to the Pope and that his legates should supervise all church affairs in those countries to which they had been sent. Basing himself on the exponents of the Canon Law, he asserted the authority of the Pope over church councils, and believed that the Pope could act even without consulting them. He also encouraged the appeals from all churchmen to the Pope. At the same time he also thought that, if the church was to take up its work of leadership, it must be free from all abuses. Hence he resolutely purified the church. Thus, he opposed the custom of the greater part of the lower clergy being married. In spite of stubborn resistance, finally celibacy came to be regarded as binding on the priest as it was already on the monk, though this was achieved only after his time. He condemned simony,

[1] Churchmen, in the Middle Ages, identified the Law of Nature with the Law of God. Scholastic theologians like St. Thomas of Aquinum, while holding that the Eternal Law which governs all things is an expression of the Reason of God, the Supreme Law-giver, believed that the unrevealed part of it which man discovered through his own reason (directed by Divine Reason) was the Law of Nature Both the Papalists and the Imperialists appealed to it for supporting their claims. acknowledging its supremacy over both the Pope and the emperor.

stretching his meaning to include the obtaining of church posts by offering secular services. Thus, he opposed lay investiture which was incidental to feudalism. He had another object in this ban on lay investiture. That was, lay control of the clergy would be removed, and the lands and offices held by church men would come under papal control. His decrees condemning lay investiture and subjecting the clergy and laymen who violated these decrees to the penalties of the church challenged the rights of the lay rulers. Emperor Henry IV particularly resented this because the clergy in Germany were his chief agents in the administration and held extensive areas from him.

The eleventh century saw this struggle. Though this particular question was solved, the question whether the Pope or the emperor was supreme had not been solved. Emperor Frederick I entered into a bitter quarrel with the Pope. While, in the eleventh century, the fight was simply a duel between the Pope and the emperor, now both secured other allies. Thus, the Pope allied himself with the communes of Italy, the schismatic Eastern Emperor and several kings of Western Europe.

Pope Innocent III was the most powerful of the mediaeval popes. In Italy, he was dominant. He was able to enforce his temporal supremacy on the kings of England, Portugal, Leon and Aragon. The young Emperor Frederick II held Sicily as a papal fief. The Pope's power extended even in Scandinavia and the Balkans. As a result of the Fourth Crusade, the Eastern Emperor had been expelled from Constantinople and the Pope hoped to extend his authority there. All hearsay against the church was strongly suppressed.

After Pope Innocent's death, Emperor Frederick II turned against the Pope and decided to settle the question by force. The struggle now did not turn on constitutional issues. Henry IV fought for lay investitures. Frederick I had refused to recognise Pope Alexander III. But now, the fight was openly for supremacy. In this contest, the emperor finally failed. But the attempt of the church to set up theocracy in Europe also failed, except in the Papal States in Italy and in the ecclesiastical states in Germany.

Mediaeval Kingdoms of Europe : France.

While the history of the Carolingians was a story of decline, the history of the kings of France was a story of progress. The first king, Hugh Capet, was himself an important feudal chief. His power lay in this, not in his title as king. But he and his successors used this power for developing the importance of the crown. Hugh Capet's demesne consisted of certain territories between the Somme and the Loire. During the course of the next three centuries, the French kings extended this demesne to include all France. The Capets governed France till 1328. They had, at first, to recognise

the power of the feudal nobles and their weakness was greatest in the 11th century. But the following causes helped them to triumph over feudalism and set up a strong monarchy : (1) Like the Merovingians and the Carolingians, they were supported by the church. The church preached that the king ruled by the grace of God. Contrast Germany. (2) There was the fortunate fact that a grown-up male heir was never wanting. Hence, disputed successions and dangerous regencies were avoided. Contrast the elective position of the German Emperor. Each of the first six Capet kings made a point of getting his son elected as king-designate in his own life-time so that the line of Capet was stabilised on the principle of hereditary right. The seventh king, Philip II, gave up this custom, as he thought the dynasty was now secure. His son, Louis VIII, succeeded as a matter of course. (3) Beyond the Rhine and the Alps, the concept of the Holy Roman Empire prevented the growth of German and Italian national unity. The absence of this proved a blessing to France. (4) The early kings, though weak, were not personally feeble. They possessed energy and vigour. (5) The French king, as the head of the feudal society, had a strong legal claim for authority. One advantage he had over the rulers of Germany was that he could retain all fiefs which had escheated to him and need not grant them to others. (6) The French king inherited also the royal tradition of the Merovingians and the Carolingians. (7) The domains of Capet himself were extensive, wealthy and centrally situated. Paris, the capital of the duchy, was an important city and tended to become the permanent capital of the monarchy.[1]

The early kings did not have greater power than the feudal lords. The great lords were practically sovereign princes who had the right of hereditary succession, coinage, taxation, declaring war and peace etc. The most important of these was the Duke of Normandy who became also king of England.[2] Immediately to the south of

[1] See Tout—*Empire and the Papacy*—for the causes of the power of the French king.

[2] By the 10th and 11th centuries, Norman soldiers, clergymen and poets made the French more famous in Europe. Some authors regard this as the beginning of the preponderance of French ideas, customs and language throughout Europe. The Crusades became essentially French movements, so much so that the term "Franks" was used by the men of the East to designate all Europeans. "France was the centre and cradle of the Crusading movement."

The Normans not only conquered England, they also set up a kingdom in Sicily. The Norman king of Sicily ruled over five races—the Normans, the Greeks, the Italians, the Lombards and the Arabs. The subjects were divided amongst three faiths—the Greek Church, the Roman Church and Islam. The Norman rulers showed wise tolerance for persons of different languages, races and religions, and this stabilised their rule.

The Normans introduced feudalism ; but, as in other lands under them kept it in check. They adopted from the Eastern Empire much of the Byzantine art of government through an organized civil service. Sicilian art is a blend of Norman, Byzantine and Saracenic influences. The blend of Christian and Muslim cultures is also illustrated in literature and science. The kingdom reached supreme intellectual and artistic eminence.

Normandy was Keltic Brittany under its duke. North of Normandy was the county of Flanders. South of the Loire, the old kingdom of Aquitaine had broken up into independent fiefs like the duchy of Gascony, and the counties of Poitou and Toulouse. The dukes of Aquitaine were also counts of Poitou (which formed their private domain).

In the apparently inglorious reign of Louis VI, the crusades weakened the nobles. Many were impoverished and estates of many escheated to the crown. The king's court included, besides nobles, clergymen and lawyers who warmly supported royal power. A large number of boroughs grew up in the royal demesne and supported the king.

East of Gascony was the county of Toulouse. The count of Anjou also governed Touraine and Maine. In 1034, Burgundy, which included all the west of modern Switzerland and the south-east of modern France, had been absorbed by the Empire. The 10th and 11th centuries saw the development of provincial feelings in these areas which continued even after they were absorbed into the demesne. Thus France was full of disorder in the 10th and 11th centuries. In the reign of Hugh Capet, the separation between France and her neighbours which had already developed in language and customs, was still further increased.

Philip II (also called Augustus) (1180-1223), son of Louis VI, carrying out his policy of encouraging the middle classes, fostered the towns by grant of numerous charters and favoured the commercial classes. The city of Paris particularly developed in size and wealth and importance. Regarding his army, he followed the custom of commuting the military service of the feudal vassals into money and the royal army became largely mercenary. He kept up alliance with the church and a full exchequer. He had occupied large territories like Normandy, Anjou, Maine, Poitou and Touraine. Thus the king, who was only one of the several feudal lords, now became the greatest of them. Philip developed a strong administrative system in which he relied on the middle classes as a check on the feudal magnates. The royal estates were till now managed by *Prevots* who collected taxes, administered justice and kept up order. Since there was a tendency for them to become hereditary, Philip subjected them to new officers called *Baillies* in the north and *Seneschals* in the south. These were recruited from the middle classes and were dependent on the king. Like the circuit judges in England, they were the agents of the king in administration, justice and finance.

While Philip Augustus made the kingdom powerful in the north, by the time of Louis IX (1226 – 70), the kingdom became powerful in the south also. Louis IX secured the large and rich territories held by the count of Toulouse.[1] Louis kept up a strong administration. He introduced the principle of division of labour in the Royal Council.

[1] *See* Grant—*History of Europe*, p. 327.

The Royal Council was at times a great assembly of feudal magnates, but was usually a small council of the king's own officials. The king constituted out of the council financial committees which later became the Chambre des Comptes which looked after royal finance like dues from the royal estates, dues from the towns, taxes on Jews etc. Till now each province had its own coinage. Louis introduced a common royal coinage, though he allowed coinage by the great lords in their own local areas. Another committee of the council which became later the Parlement of Paris looked after justice Hitherto administration of justice was inconvenient, as the king and his council were travelling from place to place.

Now the Parlement was set up permanently at Paris. Its jurisdiction was also extended by the increase in *Cas Royaux* (pleas of the crown). About the close of the eleventh century, there was a great revival in the study of Roman Law. From now, this began to affect the legal system of most European countries. Particularly, in Romance countries like France, the old Teutonic customs gave way before the admirable system of Roman Law. Thus, Louis forbade the old Teutonic custom of trial by battle and substituted appeal to a higher court. A principle of the Roman Law was that the king is the source of all justice. Roman Law contained principles favourable to absolute monarchy, *e.g.*, the will of the prince was law. Hence, it was easy to bring all important pleas from the baronial courts into the king's court. The Parlement became the court of appeal over all courts, including the baronial courts. Being filled with professional lawyers of humble birth, it showed great ingenuity and unscrupulousness in promoting every claim of the crown against the nobles, the clergy or the Pope. Thus, the Parlement was one of the important agencies which destroyed French feudalism. Louis himself suppressed a feudal rebellion at Saintes. After this no French noble was able to meet the crown on terms of equality. The main body of the council looked after administration and closely supervised the baillies and other officers.

Philip IV continued the work of Philip II and Louis IX. He continued to extend the power of royal officers. The Parlement of Paris had become completely supreme over all other courts. Philip increased the group of trained lawyers in this court and made it more efficient. The king's ministers also were taken generally from the common people and, being capable and trained in Roman Law, they strengthened royal power. One important development of the reign was the origin of the States-General. National assemblies of one kind or another had met in the past ; but its meeting as the States-General was only in 1302. Philip IV was engaged in a quarrel with Pope Boniface VIII and wanted to gather all classes to his support. Before this, the assembly included only the important nobles, the abbots and the bishops. The king now summoned also representatives of the important towns (what came to be known as the Third Estate). The assembly was called from now the Estates or States-General, French historians exalt its importance. But it is clear that the king

summoned it, not to consult with the people, but to strengthen himself by getting the support of all classes. So, it was only a royal instrument. Unlike the English Parliament, it was not rooted in the popular life. Each estate also met separately, and the first two estates could outvote the third.

Philip's financial policy was bad. Owing to his huge expenses, he was always in need of money. He adopted wrong methods of taxation like farming out of imposts, collection of taxes which interfered with trade, forced loans, confiscating property *e.g.*, seizure of the property of the Order of Templars, debasement of the coinage etc. In spite of this, he was always in debt. His successors continued his wrong methods.

A general resemblance has been noted between his work and the work of Edward I of England. Both limited the power of the nobles. Both strengthened the central administration. Both tried to increase royal power with the support of all the classes. But, while in England, Edward built on the foundation of a vigorous local life which already existed, in France everything came from the crown. Hence while parliament became important in England, in France only despotism was strengthened.

Though the French monarchy had become powerful, France was still not united by a common sentiment of nationality. It is only by the close of the Middle Ages that France became a compact and powerful kingdom. In the reign of Charles VII, the monarchy became strengthened by another event. The Pragmatic Sanction of 1438 refused to make to the Pope certain payments which were hitherto made. Some of these payments went to the king now.

The ordinance of 1439 transferred the tax called the *tallie* (which was hitherto collected by the nobles from the peasants) to the crown for raising a standing army. Note that the right to tax without the consent of parliament and the right to keep a standing army were never obtained by the English king. None in France was hereafter allowed to raise troops without the permission of the king. This step destroyed the private armies of the nobles. The standing army kept by the king provided a strong weapon to the king. Owing to the financial difficulties caused by the Hundred Years' War with England, a monopoly in salt called the *gabelle* was now introduced for the first time. This burden fell completely on the poor. Louis XI (1461-83), the son of Charles VII, increased the power of the king further. He found the Parlement of Paris growing more independent. So, to check it, he set up provincial parlements, which also served to increase royal power in the provinces. Thus, by the end of the Middle Ages, France was controlled by an administrative service consisting of *Preyots*, *Baillies*, *Seneschals* etc. All the officials were controlled from the financial point of view by the *Chambre des Comptes* and from the judicial point of view by the Parlements. As in England, the national assembly began as a feudal council but the State-General in France became feeble and weak.

GERMANY

Frederick I was greatly hampered by opposition of the feudal nobility. Its most important representative was Henry the Lion, Duke of Bavaria and Saxony, who also accumulated many other areas with the result that he ruled over territories as large and rich as those of Frederick himself. He also pushed his power in the east, Germanising that area. He was the son-in-law of Henry II of England. As the head of the Guelfs,[1] he was the great rival of the emperor who belonged to the Hohenstaufen family. The Hohenstaufens of Swabia had long been the rivals of the Guelfs of Bavaria.

In 1180, Frederick completely defeated Henry the Lion and took over large areas from him. By dividing Bavaria and Saxony, Frederick weakened the great dukes and, thus, the danger to the Emperor from these old racial units was removed. As a result of this, we have the beginning of the Wittelsbach line of the dukes of Bavaria and the separation from Bavaria of the mark of Styria which now became an independent duchy.

The quarrel with the Guelfs was ended only by Frederick II who gave them the new duchy of Brunswick.

Frederick I also separated Austria from Bavaria and made it a saparate duchy. He attacked Poland and forced it to acknowledge his supremacy. He gave the Duke of Bohemia the position of a king. The empire still included Burgundy comprising Lyons and all the south-east part of modern France.

In the time of Frederick II, the empire dominated two-thirds of Europe. On the west, it was bounded by Savoy and Provence. On the south, the whole of Italy was subjected except the Papal States and Venice. On the east, it was bounded by the kingdoms of Hungary, Poland and Bohemia. On the north was the Baltic. But the resources of the emperor had been weakened by his quarrel with the Pope. In a great diet at Mainz in 1235, Frederick II tried to give Germany a centralised judicial organization. But his attempt failed, because he had to concentrate his attention on Italy where he wanted to make the empire a reality. So Frederick frankly gave up the struggle for a strong German monarchy. He had to confirm the rights and privileges of the princes which encouraged the tendency to disruption. Further, the policy of the Hohenstaufens to lessen the power of the dukes by splitting up their holdings into smaller units led to the development of numerous duchies, counties, marches, bishopries and other principalities. All these struggled for power and independence after the fall of Frederick II. Wealthy and power-

[1] The word "Guelf" came from Welf, the name of the family of the Dukes of Bavaria and it was corrupted by Italians into Guelf. The Italians also corrupted Waiblingen, (a castle of the Hohenstaufens) into Ghibelline. From the 13th century, these words 'Guelf' and 'Ghibelline' became merely party cries to denote those who supported the Pope and those who supported the emperor.

ful cities had also developed which utilised the absence of a strong central government to become independent. Thus, instead of the five great duchies of the past, we have numerous principalities. Poland was outside the empire. Bohemia was distinct from Germany, but was included in the empire as a vassal state. Hungary was outside the empire. Provence, Burgundy and Lorraine were in the empire. Though the empire was regarded as an international power,[1] the mediaeval theory of its universal authority had never been realised in practice. England, France and Spain had never admitted the authority of the emperor. So, the empire came to have only a definite territorial significance.

Another cause of the weakness of the empire was the connection of the empire with Italy. In theory, it was a continuation of the Roman Empire of the Caesars. The German emperor was also having the title of the "kings of the Romans" and received the crown of Italy or Lombardy and then the imperial crown. This involved the emperor, as we saw, in quarrel with the Pope, which never benefited Germany. The great German nobles increased their power during the course of the struggle.

Another great weakness of the empire was the elective basis of the position of the empire. The great nobles had assumed the power to elect the emperor. By the end of the Hohenstaufen period this right was enjoyed by seven princes of whom four were secular and three spiritual. The elective character of the empire meant the elective character of the German monarchy which hence weakened his power. The electors chose as the emperor a person who was not too powerful, or would exact promises (capitulations) of powers to them from prospective candidates. The emperor was, therefore, unable to use his power to suppress the nobles. In Germany, therefore, the future lay with the great noble families, like the Hapsburgs, the Hohenzollerns, the Wittelsbachs etc. There were numerous chiefs including margraves, palgraves and graves. The disintegration of old duchies of Franconia and Swabia increased this number. Besides, there were principalities ruled by archbishops, bishops and abbots. There were also many free cities like Frankfort.

All these were represented in an assembly called the diet. This consisted of three houses: (1) The seven electors; (2) the lesser princes including ecclesiastical princes; and (3) the free cities. There were about four hundred governments all of which were practically independent. The emperor could do nothing without the consent of the diet and was practically a puppet. But the diet was also unrepresentative and ineffective. It had no power over the different states. Thus Germany became "a patch-work quilt of independent principalities" including even numerous independent knights. All towns like Frankfort, Spires, Mainz, Worms etc. were of equal importance, and none was outstanding. Hence, no town in particular

[1] From the days of Frederick I, the title "Holy" was added, giving an element of sanctity, *e.g.*, the Holy Catholic Church.

could be selected as the capital of the empire. These disruptive tendencies formed a reason for the weakness of the empire.

Emperor Charles IV (1347-75) issued in 1356 the Golden Bull which regulated the elections to the empire. The seven electors were named as the three archbishops of Cologne, Mainz and Treves and the four lay princes—king of Bohemia, Count Palatine of the Rhine, Duke of Saxony and the Margrave of Brandenburg. The three archbishops were the arch-chancellors of Burgundy, Germany and Italy. The king of Bohemia was the Arch-Seneschal. The Count Palatine of the Rhine was the Arch-Steward. The Duke of Saxony was the Arch-Marshal. The Margrave of Brandenburg was the Arch-Chamberlain. Note that Bavaria, once one of the original duchies, was excluded. It was laid down that these states of the electors should not be partitioned and the lay states should descend to the eldest heir. In the seventeenth century, during the Thirty Years' War, the Duke of Bavaria became an elector. Hanover became an electorate in 1692. Charles IV had been king of Bohemia before he became emperor. He was a good ruler in Bohemia and is praised by Bohemian writers. But German writers disparage his work as emperor. He has been called "the father of Bohemia, but the step-father of the empire." Bryce says that "he legalised anarchy and called it a constitution." But his Golden Bull made no great change in the imperial elections. It must be noted that the practice of election and all its evils were well established even before him. Charles made no attempt to give Germany political unity, a common government or a common law. He tried only to clear up certain disputed points in the election. He was a realist who only recognised in law the real position, as he saw that Germany was really a loose group of states.

Maximilian I (1493-1519) made one last serious attempt to remodel the old machinery of the empire. The question of reform had been suggested, but shelved in the reign of his father, Frederick III. Maximilian took up the question. Beginning with the diet of Worms in 1495, a number of diets were summoned to discuss measures of reform. But his attempt failed. He was able to carry out only a few unimportant reforms like prohibition of private warfare, and the establishment of a special court, called the Imperial Chamber, to which all disputes between the rulers should be referred. So the emperor continued to be an ornamental figure, without any revenue, army, or administrative functions as emperor. The various principalities which cherished their privileges were jealous of any strong central authority. Emperors like Charles V owed their power to their other possessions and not to their status as emperors.

Voltaire remarks that the holy Roman Empire was neither Holy nor Roman nor Empire. Its head was a secular ruler. It was largely German and it had no unity. It had no solid achievements to its credit. The German states in the empire could be compared to patches of different colour mingled together in bewildering confusion.

The rulers, who secured their states by inheritance, marriage and even purchase, divided them at their death. Besides, there were principalities ruled by bishops and several free cities.[1]

The organization of the Holy Roman Empire,[2] in spite of its nominal form of a house confederation, was mainly feudal in idea. The states could enter into dealings with Powers outside the empire, and the only way to coerce them was through force. The empire had no real central authority and lingered in name till 1806.

Of all the states, Prussia alone gained in strength, thanks to the energy of the Hohenzollern dynasty which ruled it. The nucleus of the state was the mark of Brandenburg which grew in strength in the later middle ages. In the 17th century, the elector of that mark got the name of the king of Prussia.

MEDIAEVAL CITIES

Commerce revived in the 11th century owing to the crusades and growth of industry. But it was still hampered by tolls and duties levied by the king or the feudal lords, transport difficulties and the ban of the Church on lending money at interest.

Growth of commerce, however, led to a development of town life from the 11th century. Industry in the towns was organized in crafts, workers carrying on all the stages from the acquisition of raw materials to marketing the finished products themselves. The crafts were grouped under guilds. In the Middle Ages, if any one desired to follow an industry, he had to belong to a guild. These guilds trained apprentices, helped members during sickness, decided disputes and regulated the quality of the goods. Entrance to a trade was only after a long apprenticeship. Later on, the guilds became close corporations excluding outsiders. Often, the government of the towns was also in their hands. These guilds declined only in the 15th century, owing to royal interference with industry and trade. They continued in name in several countries, *e.g.*, till the French Revolution in France and till the 19th century in Germany.

The ancient city-state was based on slavery. Another contrast is that, while the ancient city-state remained an agricultural community, in the mediaeval city, industry, not land, was the basis of citizenship. The town community was differentiated in its character and life from that of the surrounding countryside.

We may say generally that the circumstances which led to the rise of city-states in the middle ages were almost the same as those which led to the growth of city-states in the ancient world. Military advantage given by defensive walls helped the growth of city-states

[1] One landgrave ruled over a single castle and twelve subjects. Another had a force composed of one colonel, nine offices and two privates.

[2] *See* Newton—*Federal and Unified Constitutions.*

in both cases. Just as Greek city-states set up new cities by colonisation, we find German cities also spreading city life in other areas. But one important difference was that, though the cities in the middle ages developed great independence, in most countries, unlike the ancient Greek city-states, the mediaeval cities formed part of the bigger unit of a country-state. Thus, in England, France and Spain, the towns were subordinate to the central government. In Germany, since there was no national common government, the cities themselves became independent states. In North Italy, the land became divided into city-states, just as in the ancient world, each city here ruled over its adjacent territory also.

When we compare the nature of city life we find in the mediaeval cities also the intense political activity and patriotism of the Greek city-states. Here also it is most evident in Italy. As in ancient Greece, this development is more perceptible in the early period of history. We find in ancient Greece, as well as in North Italy, the citizen soldiers repulsing a powerful invader and the formation of temporary alliances to resist the invader. We find in both cases inability to form stable leagues owing to particularist feeling in the different cities. Another point of comparison between ancient Greece and North Italy is the great encouragement given by the cities to art and literature. A parallelism can also be traced in the constitutional development of the city. In the beginning, the government is under an aristocracy. In the mediaeval city, this is represented by the feudal authority of a baron or a bishop. Disputes between the nobles and the people begin. The struggle in Germany in its length and obstinacy is compared by Sidgwick to the struggle between the Patricians and the Plebeians at Rome. In some cases, as in Italy, the struggle culminated in the establishment of a tyranny. The contrast is that, in the mediaeval cities, the struggle was between the nobles and the merchants, and power falls into the hands of the merchants. We find in the mediaeval cities that the governing merchant guild develops an exclusive spirit and becomes an oligarchy of merchants opposed by organised handicraftsmen who also form craft guilds. There is a drift towards democracy in those cases where craft guilds are admitted to power. But this democratic movement was only partially successful even in the best cases. It never included all the freemen in the town, and in most cases, an oligarchy of mastercraftsmen seized power.

Cities in England. We find that the towns in England resembled the towns in Europe in a few particulars. (1) They have some degree of self-government. (2) They consist of industrial communities and the government of the town is in the hands of industrial groups. (3) At first, the trading classes possessed power, organized in their guilds. The members of the craft guilds struggled against them and, finally, they obtained power. But, in course of time, the wealthy craftsmen formed an exclusive oligarchy keeping out others. But

there are a few differences. (1) The strong central government which grew up in England was able to keep the towns under subjection to them. The towns were able to get only a certain degree of internal autonomy. (2) In England, we do not have the violent and continuous conflict, which we find in Europe either with the feudal nobles or between the merchants and the craftsmen.

Cities in France. The cities here may be divided into three groups, according to the degree of freedom they secured. (1) *Villes de bourgeoisie* These were found mainly in Normandy and Brittany. These towns had no self-government. They were able to get only the personal liberty of the townsman and some lessening of feudal burdens. They got redress from some grievances like arbitrary taxation. (2) *Convular cities.* These were found principally in the south. These were called so, because in imitation of Italian cities, they were governed by elected consuls. They secured all governmental rights except administration of justice, though some of them were still subject to feudal lords. Here, Roman traditions also survived. (3) *Communes.* These enjoyed complete self-government and were under a mayor and a council. The feudal lord had only the right to collect certain taxes and to hear appeals. These communes were generally oligarchies. As they increased in wealth and power, membership of the communes became more and more exclusive. Hence, we find the excluded classes giving trouble and filling the town with violence. Further, amongst the members themselves, factious quarrels developed. Many communes also became insolvent owing to financial corruption and mismanagement. Consequently, the communes began to decline. The strong centralised French monarchy increased in power. Officials of the king's treasury interfered in financial matters. The Parlement of Paris limited their jurisdiction in matters of justice. Further, from the time of Louis IX, the king began to control their government and the charters of the communes were forfeited for any offence. By 1400, the communes had lost their independence and disappeared. The independence of the other towns was also destroyed, when the French monarchy developed in power.

Cities in Germany. Here, we have the purest type of the mediaeval city. It is pure, because the community is only composed of the guilds of merchants and the industrial element. As compared with Italy or Spain, the development of city life here was late. But the evolution of the cities here went on till the sixteenth century. The church was the pioneer in fostering cities in Germany, as a part of its civilising work. These cities remained under the control of the bishops and abbots. This example was imitated by the feudal magnates who promoted the growth of towns because of the large revenue which they could get from them. The process by which these cities got independence was very complicated and differed from place to place. Before the thirteenth century, they were able to get only the relaxation of

arbitrary taxation. But after the thirteenth century, when the empire had become weakened by its quarrel with the papacy, the cities began to get freedom in greater numbers. By the thirteenth century, a very large number of them had become independent. These cities were of two kinds : (1) Imperial. These were subject to the emperor only. (2) Seigneurial. These were subject to the feudal magnates. The cities became so important that they were admitted to the diet at the close of the fifteenth century.

The early government of the towns was in the hands of an oligarchy chosen by a minority of wealthy merchants. The general body of citizens was very rarely summoned. This aristocratic council which ruled the city was presided over by a burgomaster. The craftsmen, who were organized in the craft guilds, began to fight for a share in political power and succeeded in most of the towns by the fourteenth century. Oligarchy lingered only in those cities which were engaged in extensive foreign trade like the cities of the Hanseatic League. But the democratic movement in the town came to a stop in the fifteenth century. The drift in all the cities was towards another kind of oligarchy. The guilds came to be monopolised by richer craftsmen who practically excluded all outsiders. These oligarchies continued to rule till the democratic movement of the nineteenth century.

Since the empire was weak, many of the cities had to combine for the sake of security. In the land, robbers infested the roads and there were pirates on the sea. There was also harassment from the magnates who levied heavy tolls. Hence city-leagues developed of which the most important was the Hanse which was formed about the middle of the thirteenth century. The component cities extended from Holland and Zealand to the Gulf of Finland. It included the Wendish and Pomeranian cities like Lubeck and Hamburg which were members from the very beginning. There were Saxon cities like Bremen, Magdeburg, Brunswick, Hanover etc. There were Prussian cities like Danzig, Thorn etc., Westphalian cities like Cologne, Munster etc., Margravian like Brandenburg and Berlin. There were also various Livonian cities, and the Aaland Islands were also included. Finally, it included nearly a hundred cities of North Germany and the Baltic coast. The league monopolised the trade of this area, and, by the end of the fourteenth century, it dominated the trade of all North Europe. The Baltic Sea was then the centre of a great fishing trade. This fishery was of great importance, because the strict rules of the church made fish-eating essential during the days of fasting. The league was a consideration and there was an assembly of the delegates of all the cities which met at Lubeck to consider common affairs. From 1315 up to 1500, the league was at the height of its power. It did much to rid the northern seas of piracy. Contrast the Mediterranean and Eastern waters. To facilitate their trade, they set up warehouses in different foreign countries, *e.g.*, Bruges, London, Novgorod etc. The league was able to obtain political power over north west Europe. In 1361, it was strong enough

to make war with Waldemar III of Denmark and, in 1370, by the treaty of Stralsund, it was able to inflict a humiliating peace on him. But by the fifteenth century, this political power was lost owing to the recovery of the power of Denmark which became united with Sweden and Norway by the Union of Kalmar. But, till the sixteenth century, the Hanse retained its commercial ascendancy. After this, it began to decline owing to the following causes :—

1. The league had no political unity. It had no power to bind the cities and there was no method of coercing disobedient cities except by expulsion. This was a great weakness.

2. Quarrels developed amongst the members. This was increased by the Reformation and the accompanying religious wars. The confederation had only a small common revenue.

3. Changes in commerce inflicted a great blow on the cities. The herring shoal left the Baltic in the fifteenth century, and migrated to the North Sea. Finally, the maritime discoveries of the fifteenth century transferred commerce to the Atlantic.

4. Strong governments developed in the countries surrounding the league and deprived the cities of their independence.

Cities in the Netherlands. Unlike the French communes, these were peopled by a strong burgher class whose government was protected from contact with any great monarchy till the habit of self-government was firmly established in the cities. So, when the French king developed in power, these cities were able to put up a long fight with him. Ultimately, they fell under the control of Burgundy. The cities were enriched by foreign trade, mainly in the wool, fishing and general commerce. They continued to be prosperous even after they lost their independence.

Cities in Spain. The cities took part in the struggle against the Moors. This helped them to independence and, by the eleventh century, the cities had extensive political power. But after the growth of the Spanish monarchy, they declined in importance.

Cities in Italy. It was in Italy that the mediaeval city attained its greatest power. In most cases, unlike Germany, the feudal element, which was never strong in Italy, was overthrown and subjected to the authority of the towns. Italy, in the middle ages, was disunited. The geographical nature of the land with its long and narrow shape and the mountain barrier of the Apennines which divided the north from the south made communications difficult between the northern and southern extremities. There were different racial elements in the population like the Romanised people of the centre, the Greeks of the south, the Saracens and the Normans in Sicily and remnants

of the East Goths and the Lombards. It took long for the people to become unified into one people. Italy was also divided into two parts by the dominions of the Pope which were in the centre. While the Normans built up a strong feudal monarchy in South Italy, North Italy developed into a land of city-states. They were nominally subject to the emperor ; but his authority was shadowy. It was, however, sufficient to check the rise of a strong national power in Italy. The quarrel between the emperor and the Pope promoted divisions amongst the cities which continued long after the original cause ended owing to the defeat of the empire.

North Italy seems to be favoured by Nature to be a land of cities. The great plane of Lombardy lies between the Alps and the Apennines. Cities developed in the following places : (1) Where roads which formed the gates of the Italy converged *e.g.*, Pavia or Milan to its north; (2) passages of rivers *e.g.*, Verona which commands the Adige; and (3) favourable sites on the coasts like Venice, Genoa and Pisa. The main cause of the prosperity of the Italian cities was their trade with the East and the great impulse given to this by the crusades.

In Lombardy, towns grew up under the protection of the church in ninth century. By the tenth century, they liberated themselves from the feudal lords, largely through the help of church magnates, who thus got control over the cities. In the first half of the twelfth century, the towns under their elected consuls began to struggle with the government of the bishop and ultimately made themselves free. The prevalent government was an oligarchy. The executive consisted of a number of consuls who were advised by a small Secret Council There was also a Great Council for more important matters. These councils were not elected by the people, but were nominated either by the consuls or appointed by a specially chosen body of electors. Thus these cities became self-governing states, though they were nominally subject either to the emperor or to the Pope. When the Pope and the emperor quarrelled, the cities supported the Pope, as the emperor claimed over them certain harassing rights called *Regalia*. Particularly, Emperor Frederick II claimed under this head a long list of dues and rights, many of which had been in disuse long ago. In a diet at Roncaglia, he asserted these rights add placed the cities under magistrates called Podestos appointed by him. As the cities had developed independent governments even by the early eleventh century, the wish of the emperor was to check this independence. Further, since the cities were wealthy, the emperor wanted to tax them. The chief rebellious city, Milan, was destroyed. The cities helped by the Pope defied the emperor and formed the Lombard League which included nearly all the cities of the north. The league developed in power and rebuilt Milan. It also founded Alexandria, a new city named after Pope Alexander III, who had helped them. The league defeated the emperor at Legnano. The emperor, by the treaty of Constance in

1183, had to grant to the cities the rights they demanded. Hereafter the overlordship of the emperor became merely nominal. But, the internal history of the city was disturbed. There was internal quarrel between the merchants and the craftsmen. The privileged classes sided with the emperor calling themselves Ghibelline, and the common people calling themselves Guelfs sided with the Pope. Further, the feudal magnates of the surrounding area (*Castellari*) were defeated and forced to live in the cities. This element introduced a discordant factor in the industrial society of the town. The nobles promoted civil disorder. Further, the cities also carried on civil war with each other owing to trade rivalries. As in Greece, this led to the growth of tyranny in a large number of the states by the end of the thirteenth century. The cities themselves adopted this device as a remedy against disorder. The despot who was called Podesta was a foreigner who was invested by the city with special powers renewed every year. But factious strife still continued and thus by the fourteenth century, the despotism became hereditary.

Milan was the greatest of the Lombard cities. From 1300 to 1600, this was ruled by two families of despots--the Visconti and the Sforzas. The first Visconti was appointed by Emperor Henry VII to represent him at Milan, and he ruled at first as the deputy of the emperor. One of the family, Gian Gelazzo, purchased the title of duke from the emperor. By 1350, the Visconti had conquered all Lombardy. By this time, all cities here like Verona, Padua, Mantua, Ferrara etc., were ruled by tyrants. On the extinction of this family, Francesco Sforza, whom the last Visconti heiress had married and who was the most famous of the *Condottieri* (mercenary bands), seized Milan. Milan passed under Spain in the 16th century.

Venice had, at first, no connection with the political movements in other parts of North Italy. She began her career as a city-state about the sixth century and, from then, to the end of the 18th century, she continued as a republic. The government was in the hands of the *Doge*, an elective officer who retained absolute power till the 12th century. But the attempt to make his office hereditary failed. Three stages mark the hardening of the constitution in an oligarchy. (1) In 1172, a Great Council was created. This consisted of the nobles. The people were excluded from it. This was an oligarchy of rich men. This elected the Doge. Out of this developed in course of time small executive bodies. (2) In 1297 was the "closing of the Great Council." A list of families, whose members had a right to seats in it, was drawn up. Thereafter, no new name was to be added. Thus the composition was restricted to the most wealthy. The *Doge* became simply the instrument of the Council. (3) In 1810, a committee of the Great Council called the Council of Ten was set up. This obtained all power and became the real government. It used its power to strike secretly and rapidly at the enemies of the state. In the 15th century, power passed to the chiefs of the

Ten—The Three. The government was an oligarchic despotism. The *Doge* became a figure-head and people were shut out of power.

The people, who were absorbed in commerce, tolerated this government. Because the government maintained firm peace and order, Venice ruled over a large maritime empire. Her statesmen, who, accustomed to deal with this empire and the extensive commerce of Venice, were the most observant, shrewd and practised of diplomatists in Europe. The *Doge* held his tenure for life. The council of ministers called the *College* looked after the government. Laws were passed by the *Senate*. The Great Council, which contained all the nobles whose names were in its register called the Golden Book, elected the ministers and the senators. Venice began to decline after the great geographical discoveries of the 16th century.

Tuscany had been a feudal state in the 11th century. But, after the death of Matilda who ruled over it, it disintegrated into a number of city-states of which Florence was the most important. The Tuscan cities had a longer development than those of Lombardy, though the movement for their independence started later. Florence had developed into a town by the 12th century. But it had to fight against the control of the feudal nobles. So it put itself under a podesta. In the 13th century, the conflict with the nobles increased and the constitution became more and more complex by the addition of new institutions to protect the interests of the people.

Besides this discord between the nobles (Grandi) and the people (Popoloni), there developed also numerous crafts which also demanded share in the government. This also led to the addition of more governmental institutions. So, there were numerous councils and the passing of laws became very complex. We find throughout the history of Florence this double movement of setting up some machinery to suppress the turbulent nobles and to represent the numerous crafts and trades in the government. Family feuds also led to fierce internal fighting. The state was tossed between oligarchy and democracy as in Greece. Finally, the old nobility was completely crushed. In the fourteenth century, lot was partly introduced in the election of magistrates. The Florentine constitution thus became complicated. As in the United States of America, there were numerous elections. But a gulf now opened between the rich craftsmen and the poor. Power passed to the representatives of the wealthy guilds. The lower classes made repeated rebellions, *e.g.*, rebellion of the Ciompi. But, in spite of this, they were excluded from power. These internal quarrels made democracy impossible, and the government became an oligarchy of the rich. This oligarchy was vigorous till it became weakened by its own factions.

The struggle of factions gave opportunity to a family of rich bankers called the Medici. Cosmo de Medici got the support of the people and set up his power in 1344. He came to be called the

"friend of the people". The Medicis owed their power to (1) their great wealth and (2) popular support. Cosmo respected the republican constitution and occupied the position of an ordinary citizen. But, he held real power by using his great wealth and manipulating the constitution. Contrast Milan where the tyrant ruled by military force. Cosmo's grandson, Lorenzo the Magnificent (1469-92) finally abolished all remaining republican offices in the city. The Medicis got from the Pope in the sixteenth century the title of Grand Dukes of Tuscany and ruled Florence till the eighteenth century.

In the centre of Italy, the cities were not so vigorous because of the power of the papacy. The cities in the south, like Naples, developed their independence much earlier than the towns of North Italy ; but their development was cut short by the rise of the Norman power which set up a strong kingdom in South Italy and Sicily.

A certain resemblance can be seen between Athens and Florence in the development of extreme democracy and use of lot. In the same way, a resemblance can be drawn between Sparta and Venice where the *Doge*, like the Spartan king, had no power and all power was in the hands of the Council of Ten, like the Spartan *Ephors*. A comparison with the Greek cities of the 4th century B.C. can be drawn in the mutual rivalries and conflicts of the cities and violent *Stasis* inside the cities. But, while the issues in Greece were on the basis of party principles, the issues of the division into Guelfs and Ghibellines were entirely outside the domestic politics of these cities. In both cases, the citizens rendered personal service against enemies, *i.e.*, the fight of the Greeks with the Persians and the fight of Lombardy against Frederick I. But, in both cases, later, mercenary forces were used. So the cities were ultimately conquered by the powerful country-states which were near them. Another point of comparison is the reliance of the citizens in the rule of a single person to avoid disorder and factious strife. But the Greek tyrant was not regarded as a constitutional ruler and he never set up a hereditary dynasty. But, in Italy, the rule of a single person originated lawfully, and was therefore regular. In many cases, they set up dynasties.

The mediaeval leagues, like the Hanseatic League and the Lombard League, though they developed a military organization, did not outlast the commercial needs which led to their growth.

Moral degradation was intense in Italy. In states like Milan and Naples, political liberty was suppressed and enemies of the *regime* resorted to intrigue and assassination. In Florence, political feuds gave birth to harsh proscriptions and exiles. Mutual suspicions and bitter factious quarrels led to open revolts or secret plots. There was stable government in Venice and the papal states, but intrigue and corruption were rife here also. Selfishness and cruelty displaced morality. People weakened by luxury became cowardly and lazy and relied for fighting on dangerous and unreliable bands of mercenaries.

The palace of Lorenzo de Medici was at once the seat of debauchery as well as of art and learning. The bloodstained history of the Visconti of Milan is a combination of ability, treachery, resoluteness, intrigue and calculated cruelty One of them forced papal enemy to eat in his presence the bull of excommunication addressed to him with its cord and seal. Another would avoid seeing his soldiers or visitors, shrink from the very mention of death and shriek when a thunderstorm occurred. Some Visconti issued orders that all criminals should be tortured for forty days before death. Like Milan, Verona, Padua, Mantua and Ferrara were all ruled by tyrants. The Medicis under Florence finally ruled all Tuscany, and the Visconti of Milan, all Lombardy. To the south-west of Tuscany were the papal states.

Mediaeval Representative Assemblies.

The kings had need for more revenue as the expenses of the state increased, while the feudal revenues were fixed. As there was no idea of royal autocracy, the king had to negotiate with the great groups in which the mediaeval people were organized, *e.g.*, the nobles, the clergy, the merchants etc.[1] Mediaeval kings had also to consult those classes whose co-operation was necessary in getting some matters done. Thus began representative assemblies for consultation and granting of supplies. Society was largely agrarian. The landowners were the most important class. The class of traders and craftsmen was not so important, and with the exception of political capitals like London and Paris, towns were mostly small. Still, this class survived because of the need of the king for money from this class. The familiarity of the mediaeval mind with self-governing groups led naturally to the idea of using representatives in the government.

The king had to seek financial aid from the classes of merchants and country gentry who were rising in importance. This development became important only in England where a Parliament grew up which formed itself into two houses : (1) the House of Lords comprising barons and bishops, and (2) the House of Commons comprising representatives of the gentry of the shires and merchants of the boroughs. In the later Middle Ages, the weakness of the monarchy enabled the barons to use Parliament to check royal power. It was established that the king should not collect taxes without the consent of Parliament, he should not enact laws without the consent of Parliament and that his ministers could be impeached and punished

[1] The mediaeval government could not be a despotism. Feudalism acted against it. Further, as Ranke points out (*Turkish and Spanish Monarchies*), the mediaeval constitution "was based on individual and corporate communities which sought carefully to repel every incursion of the central power." Carlyle (*Political Liberty*) points out that mediaeval political theory regarded the ruler as subject to the law (that is, the custom of the community). He believes that, except for a passing phase of absolutism in the 17th and 18th centuries, the conception of political liberty was continuous from the Middle Ages to the French Revolution.

by Parliament. But the weakened government led only to baronial disorder which had to be put down by the strong Tudor dynasty which came to power in 1485.

The development of the constitution in England was different from that of France. The strong grovernment of the king repressed feudalism. So the nobles had to work with the other classes like the class of country gentry (or knights) in the shires and the merchants of the boroughs (burgesses). Both in France and England, the National Assembly began as a feudal council to which the knights and the burgesses were summoned. Both Edward I of England and Philip IV of France, for the purpose of easy collection of taxes, added this element. But the French States-General had no root in popular life. The English Parliament was based on the old communities of the shire and the borough. Further, the Third Estate in France was weak, as the States-General was divided into three houses of which two were of the privileged classes (the First Estate—clergy, and the Second Estate—nobles). Disunity between the Estates made it ineffective. Unlike England, rigid class barriers separated the Third Estate from the other two. The States-General, unlike the House of Commons, had no control of taxation. The French king's power was supported by a standing army, a danger from which England was saved by her geography. Hence, the States-General remained feeble and only an ornament.

In Spain also there developed assemblies called *Cortes*. But all cities were not represented in them and disunity amongst the classes hampered them.

The Crown in all these cases was able, by separate negotiation with each estate, to divide the assembly and crush the estates in detail. Thus, representative assemblies failed before royal despotism except in England, where Parliament, though it was now a popular assembly only in form, pointed out to the future the manner in which royal power could be checked without the ultimate remedy of revolt.

THE KHALIFATE

The rise of Islam is one of the most important events in the world. Gibbon (*Decline and Fall of the Roman Empire* Ch. 50, and 51) comments on the peculiar geographical position of Arabia as the meeting place of three continents. The area is largely desert, as there are no high mountains as in India to intercept moisture-bearing winds. This conditioned the Arabs to be divided into isolated nomadic tribes, still further parted by tribal feuds. But the people had a strong spirit of individualism and inclined to be contemplative, as outer nature gave no scope for any mood other than introspection. In such a soil was born Muhammed, the Prophet of Islam. H. G. Wells's estimate of his character in his *Outline of History* is very unfair. By sheer force of his great personality and character, he unified the loosely-knit Arabs by the

common faith of Islam. This indicates his genius for organization. The date when he, leaving his native city of Mecca, set himself up in Medina—622 A. D. —was the beginning of the era called *Hejira*. The *Hejira* marks a clear division in his life. Till now, he had been only a preacher. Now he began to rule at Medina and soon all over Arabia.

His successors were the Khalifs. The Khalif was not merely the political head of the state, but the spiritual head also. The central government was modelled on the Persian model in civil government and on the Turkish in military. In theory, kingship was based on election by the Faithful, but this theory was proved to be unworkable. Still there was no recognised law of succession. The ruler was supposed to be responsible to the Muslim people under him and could be deposed by a decree of the *Ulemas* (men learned in the Sacred Law). According to Islamic theory, the ruler was an ordinary Muslim, equal to all Muslims. No hereditary right was recognised, though the eldest son ordinarily succeeded. Even the lowest Muslim could compete for the throne. While the king could claim against his opponent all powers allowed to him, a successful rebel could do the same. The ruler was usually elected by military chiefs. Hence wars of succession leading to extermination of dynasties were common. Superior military force was the only avenue to the throne. Weak kings had no chance. So monarchy had to be autocratic. The Ulemas did not form a regular machinery nor was their authority always respected, and there was no constitutional check.

The original patriarchal kingship became soon a luxurious monarchy helped by a bureaucracy. The ruler could not be distinguished from the state. There was no constitution in the ordinary sense. He controlled the whole administration and appointed such officers as he liked. He was the supreme judge and all could lay their complaints before him in the court. He commanded the army. He had great influence on the private life of the community and set its social tune. It became customary that the *Khutbah* (*i.e.*, the sermon delivered in the prayer on Friday meridian or Zuhr) should contain the name of the reigning Khalif. It is only after the decline of the Khalifate that independent Muslim kings substituted their own name in the *Khutbah*. Till the thirteenth century, all Muslim world was supposed to be united under the religious and political authority of the Khalifate. There were high household officials and a special class of courtiers attending on the ruler and indirectly influencing the government. He had a carefully organized bodyguard. A large body of slaves recruited from various nationalities was attached to the household. The harems were also extensive establishments.

The principles of government and departmental arrangements of the Khalifate were adopted (with local modifications) by other Muslim states later. Finance was separated from civil and military

departments and given to independent officers so as to be a check on other officers. Since the government was military in origin, even civil officers took rank as military officers. The one important exception was the *Wazir*, whose post was civil from the beginning, as he had to be in constant attendance on the ruler and so could not go on military expeditions for a long time or a great distance. He acted as the representative of the king on many ceremonial occasions.

The non-Muslims were called *Zimmis*. The *Zimmis* had their contract with the state for protection of life and property in return for obedience to the state and payment of a poll tax called *Jizya*. According to strict Islamic law, they had to embrace Islam or death, but were allowed this concession by Khalif Omar. The *Jizya* should not be imposed on hermits, paupers, women, children or slaves.

The Islamic state was a theocracy, though, unlike the theocracy in Europe, it did not recognise the claim of a priestly class to interpret the will of God. The *Ulemas* were not clergy, as they had neither organization nor vows. Even the *Muzzins* who called to prayer and the *Peshnamaz* who conducted the service were hereditary. The *Moulvis* formed, not priests, but men learned in law and theology. Elphinstone remarks that a *Moulvi* was given that status by a convocation of some recognised members of that class who had ascertained his fitness and formally invested him with his new character by tying on a peculiar kind of turban. The Holy Law (*Shar*) based on the *Quran* was supreme, and the king would interpret it, but not go against it. The king had to conform to the rituals and symbols of Islam and precedence in the court was always given to the theologians. This class monopolised all judicial and religious offices. The *Kalima* (Muslim creed) was often used in the coinage.

The law was based on *Quranic* injunctions. There were two other sources of law : (1) Case law or precedents ; and (2) opinions of jurists. Both only professed to interpret the *Quranic* injunctions and did not claim to add any new principle, as the *Quran* is supposed to be of divine revelation. Hence, the law tended to be rigid and inelastic. It also authorised barbarous penalties.

According to the orthodox interpretation of the *Quranic* law, the duty of every pious Muslim, says Sarkar in the *Cambridge History of India*, was to wage holy war (*jehad*) against non-Muslim lands (*Dar-ul-harb*). In theory, the subdued infidels could be reduced to slavery ; but, in practice, were allowed to share in the protection given by the state to the "people of the book" (that is, Jews and Christians), provided they paid the *Jizya*. But, even then, they remained under certain political and civil restrictions like avoiding undue publicity of worship and building new shrines.

The *Qazi* who looked after justice was helped by a *Mufti* who

stated the law from Arabic books on jurisprudence. The *Muhtasib* regulated the lives of the people in accordance with the *Quran, e.g.*, suppression of heresy, drinking, blasphemy etc.

The revenues of the state came from a land tax (*Khiraj*), a share of the spoils of war, property of those who died without heirs, mines and treasure troves, dues from Crown lands (*Khalsa*), various cesses (*Abwabs*) and presents made to the rulers. All Muslims had also to contribute a share of their income (about 1/40th) to charity to Muslims (*zakat*). There was also the *Jizya* collected from non-Muslims. There were also *Waqfs* (rent free lands whose income had to be spent on the maintenance of mosques).

Certain grants called *Iqtas* were made by the state to Muslims. These, under Persian influence, became later assignments (*jagirs*) for military service.

The Khalifate declined by the 13th century. Extension of the Khalifate Empire made it unwieldy and weakened the base. Local officials tended to independence. The later Khalifs were weak and were degenerated by luxury. Under the Abbaside Khalifs, Spain separated under an Ommayad Khalif, and Persia separated under a Shia king. The Seljuk Turks (orthodox Sunnis) exercised control over the Khalif (at Bagdad). In 1258, the Mongols took Bagdad and killed the Khalif and the Khalifate disappeared. The uncle of the dead Khalif fled to Egypt and got recognition from its Momluk Sultans. A dynasty of phantom-Khalifs continued here till, in the 16th century, the last of them resigned his title to Sulaiman II of Turkey. Muslim rulers like the Mughals of India never recognized, however, a supreme Khalif.

MEDIAEVAL INDIA

The Delhi Sultanate.

Muslim conquest led to the establishment of the Sultanate of Delhi.[1] The word "Sultan" was, at first, a title of a high office in the Khalifate. The Sultan maintained a pompous court. He dined in public. The possession of elephants and treasuries of gold and silver was not allowed except in the case of the Sultan and persons permitted by him. He called himself "Shadow of God". Coins were struck in his name and the *Khutbah* was read in his name, though some Sultans like Iltutmish invoked the help of the Khalif. The Sultanate, as Dr. Qureshi points out, though in theory, a part of the Khalifate, was in practice independent. Sultan Balban attached great importance to etiquette in his court where he never allowed anybody to laugh in his presence. Contemporary chronicles give a good picture of the splendour of his court.

The Sultan had necessarily to have a number of ministers, and business was organized into departments. The Imperial Council was composed of the highest officers. It was not a legally constituted

[1] Aziz Ahmed notes its resemblances to the governments of Persia and of the Roman Empire in *Indian Culture*, January 1939.

body and had only consultative functions. As the full council was too big, real business was done in informal consultations held by the ruler with a few chosen councillors. The council must be distinguished from the Court (*Bar-i-Am*) which was composed of dignitaries, officers and envoys of foreign powers. This court followed a set procedure of etiquette. There was no possibility of any united opposition of ministers to the king. The *Ulemas* also were not strong enough to depose the ruler.

The Chief Minister was the *Naib-i-Mulk* (Lord Lieutenant of the Realm), a post for which a noble was selected. But his power varied according to the strength of the king. The *Wazir* who had charge of revenue soon became the chief minister. His office was the *Diwan-i-Wizarat*. This was fully developed only by the period of the Tughluq Sultans, but its efficiency became perfect only under Akbar.[1] The Minister of War (*Arid-i-Mumalik*) had to inspect the musters of cavalry supplied by the nobles. Like feudal magnates, these received grants of land (*jagirs*) and had to supply a specified force of cavalry. But, unlike Western feudalism, the fief-holders[2] had no hereditary or even personal right to the fief and could be transferred from one to the other. They looked after the ordinary executive work of government, as they were often provincial governors. Under weak kings, they tried to evade liability for service. The army, at first, consisted only of cavalry, but elephants were soon added. The cavalry was supplied by the fief-holders. To prevent false musters, Ala-ud-din Khalji introduced branding or stamp of the Palace (*Dagh-o-mahali*) which was done in a fixed place on the head of the horse. This was then entered into a register. Musters were held annually and only those horses were counted which had been branded already. The Comptroller of the Military Department was the *Dabir-i-Arid*.

Another minister looked after correspondence with provincial governments. Another looked after trade and markets. The *Sadr-us-Sudur* looked after justice and religious endowments. It was his reading of the *Khutbah* in the new king's name which legalised his accession. He was the chief judge of the empire and heard appeals. He appointed the Qazis who looked after justice in the localities. The criminal law was very severe and allowed torture and mutilation. A Superintendent of Markets (*Shahna-i-Mandri*) supervised the movements of all caravans and registered all merchants. The royal workshops (*Karkhanas*) had their separate officers to supervise them and each had a separate financial department which had to render accounts to the Treasury.

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[1] As Tripathi points out (*Some Aspects of Muslim Administration*, 1936) it was only under Akbar that *Wazir* ceased to be dangerous, when his financial powers were separated from his political powers.

[2] *The Cambridge Indian History* prefers the term "assignment" to "fief". Unlike the feudal fief, no rights of sovereignty were attached to the *Jagir*. The holder simply received an assignment of revenue estimated to yield the income due to him. But he assumed the administration of the area and assessed and collected revenue.

The *Barid-i-Mumalik* supervised the news service. In all the headquarters of administrative units, there was a *Barid* who reported to him. This office which prevailed under the Achamenids of Persia had been adopted by the Khalifs. There were also officials looking after agriculture and traffic on rivers. There were officials connected with the household. Dr. Qureshi compares them to those of Europe with regard to the share they had in the administrative machinery. The household was under the *Amir Hajib* or *Barbak*. A separate staff administered the crown lands, and the harem had its own officers. The working of the departments became complex in course of time. Most of the officials were given rank in the army, though they had civil duties, and many of them recruited from slaves.

Provinces were under governors. The term *Wali* was used for governors with extraordinary powers. The others were *Muqtis*. Most of the local administration was in the hands of the Hindus. Subordinate machinery of government and the agency for revenue collection was also largely Hindu. Hindu caste tribunals looked after Hindu cases. There were also Hindu feudatory chiefs. From the revenue he collected, the governor kept a sum for paying his troops and his expenses of government and remitted the rest periodically. In practice, as Moreland and Chatterjee remark (*History of India*), the amount of this surplus was often fixed, so that, in effect the governor was a revenue-farmer. He also often received agreed sums from the Hindu chiefs in the province. Under weak rulers, the governors as well as the Hindu chiefs rebelled, whenever there was opportunity. So, the state was not a homogeneous political unit. It was a group of units ruled by men who yielded uncertain obedience to the Sultan.

Dr. Qureishi (*Administration of the Sultanate of Delhi*) holds that the Delhi Sultanate was as much a culture-state as that of the Mughals. Dr. Ishwar Topa (*Our Cultural Heritage*) thinks that the kings fostered public welfare. Mr. Ruthnaswamy (*India From the Dawn*) believes that the *Jizya* on non Muslims was not oppressive and the tax had its counterpart in Turkey. According to Dr. Ishwar Topa (*Politics in Pre-Mughal Times*), Balban was an example of the kings who held kingship as a trust for the welfare of the people and accountable to God. In the same book, he urges that there was an imperceptible charge from the adventurous mentality of the early Muslim kings who had only the idea of domination to the real kingly ideal of upholding the well-being and welfare of the people. Havell's statement that Ala-ud-din's statesmanship was summed up in the efficiency of the war machine to which all others were subordinated is not quite correct. It is true that his success sometimes unbalanced his judgment and he dreamed over the wine-cup of founding a new religion and setting up an empire greater than Alexander's and described himself in his coins as "a second Alexander". But he never allowed these fancies to master him. His market regulations illustrate his genius for organization. " No merchant or farmer should hold back even a *man* or half a *man* of grain and sell it for a *dang* or

a *diram* above the regulated price." Reports should be made daily to the Sultan about market transactions from three sources—superintendent of markets, reporters and spies. If a trader used short weight, an equal part of his flesh was cut off from his body.

This raises the question whether the king could over-ride the principles of Muslim Law. Dr. Qureshi asserts that the jurists recognised the right of the king to interpret the law, but he could not go against the recognised interpretation. He also thinks that the economic controls imposed by Ala-ud-din were not new, but only an exercise of the attribute of Muslim kingship, and that Ala-ud-din only developed and increased its efficiency. But it seems to be clear that, though Ala-ud din got the opinion of the Mullahs to support him in any policy he wanted, he never allowed their interference in the affairs of the state. Many Muslim kings, while allowing the enforcement of the dictates of Muslim jurists in private law, claimed complete discretion in matters of state. The chronicler gives the account of long conversation which he records as having taken place between Ala-ud-din and a *Qazi* which illustrates the king's mind. Ishwar Topa thinks that he was quite free from all religious scruples. It may be noted that a Muslim king had to be also the missionary defender of his creed.

Ambition for conquest (*Jahangiri*) and consolidation (*Jahandari*) led the Sultans to unwise extension of the empire which made it unwieldy. While Ala-ud-din Khalji allowed native princes to continue as rulers once they recognised his sovereignty and promised tribute, the Tughluqs superseded them by governors. All sorts of foreign adventurers who flocked to the court got offices. Since many of them had no stake in the empire, they were ready to rebel. Farming of revenues to the highest bidders led to oppressive exactions on the peasants. All this led to the decline of the empire. But, it is noteworthy that the parts of the empire which became independent imitated the administrative organization of the empire. The Bahmani Sultanate of the Deccan had a Lieutenant of the State (*Vakil-us-Sultanat*), a Finance Minister (*Amir-i-Jumla*), Deputy Minister of Finance (*Nazir*) etc.

Finally, the Delhi Sultanate was overthrown by the Mughals under Baber.

CHAPTER III

THE ERA OF ABSOLUTISM

SIR HENRY SLESSER remarks (*The Middle Ages in the West,* 1950) that Europe then was "a spiritual society held together by a common religion rather than by any strong physical or governmental nexus." The people were divided into classes, each having its own special customs, dress and occupations which were hereditary at first. Slavery passed into serfdom. Even in the Middle Ages, there is no proper distinction between legislative and judicial functions of the state. Disputes between feudal vassals were decided by custom. The idea of the inviolability of law is found in documents like Magna Charta of England.

Except in the Empire, Poland and a few other states, kingship had become hereditary, and thus grew up a stable government, avoiding wars of disputed succession. In England, except the Palatine counties, all parts of England were subject to royal jurisdiction. The sheriffs of the shires were regularly controlled by itinerant justices chosen from the staff of the King's Council. In France, the royal demesne which was small in the eleventh and twelfth centuries was greatly increased. In the thirteenth century a royal administrative hierarchy controlled the country though, unlike England, local representatives were not used to check the royal officials.

The Mediaeval State[1] was loosely knit. New ideas came to fruition very slowly in the minds of men. Hence, it was, in general, stable. In war, diplomatic combinations failed as in the Crusades. Even battles had little fruitful results. An enemy could not reduce a country without incurring an expenditure of money which the mediaeval finance could rarely allow. The only profitable wars were those fought against the tribes of Eastern Europe. The Mediaeval state has been aptly compared in defeat to the lower organisms which have tremendous vitality.

The vested interests of property, privilege and religion conspired to keep down opponents, like the Jacquerie in France or the Hussites in Bohemia and, from this point also, the state was stable. While the peasantry were unfree, the higher classes were protected by feudal privileges. In the same way, unbelievers in religion and heretics had no political rights.

The mediaeval view of government was that it was of divine ordination. The Renaissance brought in the conception that it was an artificial product which could be changed. These discussions give birth to political science as seen in *The Prince* (1513) of the Florentine

[1] H. W. C. Davies—*Mediaeval Europe.*

Machiavelli[1] and the *Utopia* of Sir Thomas More. But the Renaissance politician believed in a central authority strong enough to guard itself against all its neighbours. This resembles the Greek emphasis on the autonomy of the state. But, unlike Greece, no ethical considerations or regard for the rights of individuals were held to limit the power of the state. Hence, the Renaissance Monarchy tended to be a despotism based on the support of a professional army and upheld by a professional bureaucracy Renaissance sovereignty was a *state* ideal, rather than a *national* ideal. But, national sentiment supported the established dynasties.[2] Richard III was a typical Renaissance prince in his crimes and his patronage of New Learning. *The Prince* is the personification of the state – the 'Power'. Hence, we hear of the designs of France, destinies of Spain etc. The sovereignty of the state is associated with that of the king as sovereign. National consolidation was accompanied by the triumph of monarchial feeling. Hence, as Johnson points out (*Periods of European History*) dynastic interests of rulers dominate politics.

The rise of nations is a remarkable feature. The Irish people, living in an island, and having common institutions, formed the oldest conscious nationality. Practically homogeneous culture created individual nationalities in France and England. Historical circumstances created nationalities in Spain, Portugal, Switzerland and Scotland.

Rising national feeling made the state cherish its independence against external authority[3]. Religion also became gradually nationalised. The church became a part of the state machinery in many countries.

The mediaeval ideal of the world-state had declined. The spirit of nationality led to the rise of distinct states, each with its own national feeling. The Reformation increased the national distinctions. The Nation-State expressed itself in a strong monarchy. The

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[1] Lord observes in his *Principles of Politics* : —

"The position upheld by Machiavelli can best be understood if we regard him as an uncompromising opponent of the mediaeval system which subordinated government and morality to spiritual ends. Pure politics, untramelled by any other consideration, is the strain in both *The Prince* (devoted to Monarchy) and *Discourses on Livy* (devoted to the Republics). There begins the modern attitude of the sciences which claim the liberty of independent enquiry for each science. Machiavelli does not attempt to justify the means which he recommends ; they are justified by the end His patriotism opposed not only foreign intervention in Italy, but the use of foreign mercenaries by the Italian princes"

To Machiavelli the state was the highest type of existence and he was prepared to sacrifice everything for its sake. Thus, the interest of the state was sufficient justification for any act. His service was that he made politics independent of theology. He only stated frankly the methods of statecraft then in use.

[1] See Figgis—*Divine Right of Kings.*

[2] This led to the growth of International Law which could never have developed in the Middle Ages.

interests of the nation were identified with those of the ruler. The despotic monarchy defended the nation against external danger and protected it from internal disorder. The patriotism of the people supported the king in his conflict with all forces of disorder. In Europe, the old mediaeval assemblies were weak. The component elements of the assemblies were mutually disunited and stood for sectional interests as against the common interests of the nation. Further, the church now supported monarchy and preached the divine right theory.

The jurists who had studied Roman Law advocated the unlimited monarchy which was envisaged by the Roman Law. Sidgwick remarks that modern history begins in the middle of the seventeenth century, when through the predominance of the monarchy "states were finally constituted all over Western Europe whose internal coherence, unity and order contrasted strikingly with the divided authority, doubtful cohesion and imperfect order which characterised mediaeval institutions." Governmental organs were differentiated and defined.

Absolute monarchy formed a necessary stage in the evolution of the state. It united the state, repressed the nobles and gave it order. It improved the condition of the middle classes and stimulated national patriotism.

The nobles were losing power.[1] In England, they had compromised their power with the squires and merchants In France, the kings had repressed them, as also in Russia. In most of the German states, they had lost their political importance. In Holland and vast parts of Italy, their importance had lessened. But in several lands, though they had lost power, they retained many peculiar privileges. Castles had given place in many countries to fine country houses. But the French noble, unlike the English noble, was not fond of the country side. He preferred to live in the gaiety of the royal court.

Development of toleration in religion was slow. Just as religious passion hated it, the despotic monarchy disliked it as a disruptive force in the state.

Economic conditions also changed. The first disruptive influence was the Roman Law. The Roman Law had been created in a capitalistic age and allowed lending money at interest Hence, in the thirteenth and fourteenth centuries, Christians entered the field of money-lending which was till now the monopoly of the Jews—first in Italy, the chief commercial centre of Europe, and then elsewhere, though the morality of the practice was still under discussion. Further, Roman Law allowed "forestalling", and growth of free competition undermined the restrictions of the guilds about just prices and proper wages. Rise of capitalism was facilitated. Roman

[1] The twentieth century sees the decay of the aristocracy in the old sense. A plutocracy developed in the nineteenth century.

Law allowed private ownership of land. Hence, the lords of the manors began to encroach on the lands of his serfs and tended to dispossess them of their rights. When it revived in the twelfth century, Roman Law had its chief centre of study at Bologna. Its influence reached its height in the sixteenth century.

The kings, while following a mercantile policy (protective tariffs to help domestic industries and trade and seeking markets in colonies), supervised all aspects of economic life.[1] This control began in England and France even in the fourteenth century.

Another unsettlement came from the influx of precious metals from America after the discovery of the New World. This led to a sharp increase of prices. This inflation helped the commercial and industrial classes, but weakened the nobles. The kings had to depend more on the former. Prices ceased to rise after 1600 and soon became stable. Then commenced a steady rise of wages till by 1700 they caught up with the prices. Thus, wages and prices were restored to a balance as before the sixteenth century. Consequently, discontent of the lower classes lessened which forms a reason for the greater strength of the government.

Governments had also now greater resources. It was an era of absolutism. Throughout the seventeenth and eighteenth centuries, there was held the theory of Divine Right of Kings. Bossuet drew arguments from the Bible to uphold the sacred position of the king. This theory was old. It had come into prominence in Europe when the Imperialists, to counter the claims of the Papacy, put forward the counter-theory of the divine origin of imperial power, *e.g.*, Dante. Now, the state was identified with the ruler. All private interests were subordinate to his.

During the Reformation, the Protestants reiterated the old theory of the divine origin of civil authority to uphold the rights of Protestant princes against the Pope. Their opponents, especially the Jesuits, emphasised the purely earthly character of the state. But gradually the position changed. The Roman Church also allied itself with Catholic princes and supported their divine authority. Thus, after the Reformation, both Protestants and Catholics supported the rulers on their side on the basis of this Divine Right Theory. Figgis (*Divine Right of Kings*) explains away much of the stigma connected with this theory. This religious basis served as a sanction for authority in turbulent ages and gave a moral purpose to authority itself. But it undoubtedly led to abuse and oppression of people by the princes who became irresponsible.[2]

It is also fair to note that in "free" countries very little reform was carried out. But the despots were competing with one another

[1] A reaction against this close control developed only in the last half of the 18th century. It was a Frenchman who invented the phrase *Laissez faire laissez passer*.

[2] Filmer's justification of the divine right of kings in general, and of Charles II's government in particular, were trenchantly controverted by Locke in his first *Treatise on Civil Government*

in their zeal for reforms in all spheres. In the eighteenth century a number of great kings who got the name of "Enlightened Despots" accomplished a number of reforms in the political, economical and social life of the community.[1]

One of the outstanding examples of Enlightened Despotism was Joseph II of Austria. Earnestly actuated by philanthropy about the welfare of the people, he began with reckless haste to change the feudal state into a modern centralised state like Prussia. He desired that no foreign power, whether of the German Empire or the Roman Church, should control internal affairs. His lack of tact led to internal commotion, which broke his spirit and led to his death in 1790. His brother Leopold II, who succeeded, saved the state by cancelling all his brother's reforms, being cautious and circumspect.

The system of Absolute Monarchy also led to abuses. In many states, autocracy was oppressive. The kings abused their power for selfish purposes. They plunged Europe also into a number of dynastic wars to gratify their family ambitition and greed. It was this abuse of power which led to the French writer, Montesquieu, to elaborate his doctrine of separation of powers. The execution of laws should not be in the same hands as the making of them. The making of laws should not be in the hands of a single person. Interpreting the law should also be separate. The first and third principles form the Rule of Law, and the second contemplates legislation through a parliament of popular representatives.

FRENCH ABSOLUTISM

In Constitutional matters, the monarchy of Henry IV began the period of enlightened autocracy.[2] The prolonged civil war before

[1] Prof. Merriman (*Six Contemporaneous Revolutions*, 1938) shows that the movement against Absolutism was only in six countries in the 17th century — England, the Netherlands, France, Catalonia, Portugal and Naples. In the latter three, weak and inefficient government prompted revolts. In the Netherlands, it was a republican movement against the Stadtholder. In France, the Fronde was never formidable. In England, the Puritan Revolution ultimately failed.

[2] France was the first European State to develop a strong monarchy. Bodin justified it in his writings. His object was to counter the appeals to rebellion which the Calvinists and Jesuits were making, stop the religious civil wars and deny the powers of the nobles. Book I of his *Republic* deals with the nature and end of the state. Book II surveys Monarchy, Aristocracy and Democracy. Book III deals with officers like magistrates. Book IV investigates the causes of the rise and decline of politics. Book V turns to international morality and customs. The sixth Book sums up his discussions. Royal monarchy is his ideal and he stated that sovereignty is absolute and indivisible and above all law except divine law. This is clearly a mistake, as moral considerations, though they may be taken into account, cannot legally control the action of the state. But his theory of sovereignty need not help monarchy alone. Sir Thomas Smith who applied his theories to English institutions in his *De Republica Anglorum* (1583) identifies the sovereign power with Parliament. Spinoza in his *Tractatus Politicus* distinguishes the sovereign power from the particular officer or assembly through which it finds expression.

him made absolute monarchy popular. The instrument of the government was the royal council, consisting of about a dozen picked men who were mostly of middle-class origin. This Council of State was not only the supreme executive in foreign and domestic policy, but exercised legislative power through its ordinances. It discussed and promulgated most of the laws. It was a supreme court of justice, for it could quash the decision of all other courts. It fixed and apportioned the taxes. Various small councils which had emanated from it looked after various departments of the state. These councils were composed for the most part of men of the middle classes, for the nobles were completely excluded from political power. The only institution which would be an obstacle to the crown was the Parlement of Paris, which had got gradually the power to refuse to register the royal ordinances submitted to it by the king. It claimed this power from the reign of Louis XI. But it laboured under two defects : (1) It was a narrow oligarchy of judges and lawyers. It never represented the people and so did not get their confidence. From the reign of Henry IV, its membership became hereditary, and it consisted of the "nobles of the robe". It was selfish. It opposed royal edicts especially if they went against their privileges. It was also corrupt. (2) The king could intimidate the body or override their opposition by holding a "*Lit de Justice*", summoning the Parlement in solemn assembly before the peers of France and officers of state and ordering it to register the laws, when it had to obey.

The States-General in France was never important. Its division to three houses—the Clergy, the Nobles and the Commons—weakened it. There was no class of country gentry as in England which united with the burgesses and strengthened the Commons. The nobles and the clergy being exempt from most of the taxes, did not support the Commons in attempting to control taxation. Henry IV did not summon the body at all. Originally, all provinces had their provincial estates composed in the same way ; but after the fifteenth century, most provinces lost these bodies.

In the fifteenth century, the chief local officers were the *Seneschals* who collected royal revenue, tried petty cases and looked after local government. But Francis I set up new offices called *Governeurs*. This led to the decline in importance of the old offices. The feudal courts of the nobles were rigidly supervised and confined to dealings with their serfs. The towns had their own government ; but there was little independence, because the governing officials were usually nominated by the Crown. The church had its own courts ; but these were rigidly confined to their own jurisdiction.

Royal Revenue came from feudal incidents, profits of justice and customs. There were direct taxes like the *taille* which fell practically on the lower classes and indirect taxes like the *gabelle* or salt monopoly. The king also got money from the sale of offices. Most of the taxes were collected by tax-farmers. Henry IV's minister, Sully,

insisted on efficiency in tax collection, supervised it and suppressed abuses.

France became the great model of absolute monarchy. Richelieu, minister of Louis XIII, had broken the power of the nobles by his executions and his edicts against duels and building castles without royal permission. Neither influence nor name could protect a noble. The territorial magnates were serving as *gouverneurs* in the local areas. Richelieu superseded them by royal officials called *Intendants* who were usually of middle-class origin. These were given almost complete authority in their local areas. The King's Council was organised and systematised as the instrument of the royal power. Richelieu also allowed the States-General to fall into disuse. It did not meet between 1614 and 1789. Even where provincial estates were allowed to continue, the greater part of their powers passed to royal officials. The Parlement of Paris was to remain only as a judicial body and was not allowed to interfere in legislation or administration. Thus, Richelieu strengthened absolutism. He was not its creator, because the French kings had been advancing towards it. The destruction of feudal privileges had already been a great step towards the development of a powerful monarchy. The unity of France could never be realised except through this powerful monarchy. Richelieu's mistake was that, though the nobles were powerless, he still left them in possession of their old feudal rights over the peasants. He made no attempt to reform the old bad system of taxation and the exemption from many taxes which the nobles, the clergy and the official classes enjoyed.

In the time of his successor, Mazarin, the nobles made an effort to recover their power in the movement called the Fronde (1648-1653). The first Fronde began as a constitutional movement centring around a programme of reforms drawn up by the Parlement of Paris. The demands of the Parlement were registered. But the Parlement was too weak to carry out reform. Its members held office by purchase and heredity. It had no constitutional power to check the government. The second Fronde was an attempt of the nobles to get back their privileges and this had nothing in common with the first Fronde. After it was suppressed, the nobles were reduced to the position of docile courtiers. The Parlement of Paris was forbidden to meddle in the affairs of state. It became now discredited.

The power of Louis XIV (1643-1715) was built on this foundation. Unlike the king of England, he was not hindered by a Parliament. The king was the sole maker of the law. He levied taxes at his pleasure. The nobles had become dependent on royal favour. A paid bureaucracy carried on the administration, and a fine army, led by great generals, buttressed royal power. Louis was himself one of the ablest kings of the time, and he was helped by efficient and capable ministers. The French nation, tired of internal troubles, accepted strong royal power with fervent loyalty. General opinion in France identified the greatness of France with her absolute monarchy.

The instrument of the government was the King's Council. Various small councils which had emanated from it looked after various departments of the state. These councils were composed for the most parts of men of the middle classes, for the nobles were completely excluded from political power.

Local government was also dominated by an official bureaucracy which had superseded the mediaeval Baillies and Seneschals. These older officers became sinecures. The Intendants and their subordinates dominated the village communes, the municipalities and the provincials *pays d' etat.* These were recruited from the middle classes, and these posts attracted able men, because they could get promotion from this to posts on the councils. In the 18th century, the French government was the best in Europe.

Louis had a very able minister in Colbert who attempted to reform the system of taxation. But owing to the opposition of vested interests, he could not carry out his ideas. Colbert's aim to increase free trade inside the country also failed. He revived the guilds to ensure quality of goods in industry and kept them under royal control. After him they declined.

A feature peculiar to French government was that every office had become hereditary in practice and was purchased and sold. Another difficulty was that the old local offices still continued, and the existence of two conflicting authorities led to friction. Colbert wanted to introduce a uniform and centralised system. He developed the office of the Intendant whose office had never become hereditary or subject to sale. These officers represented the king in each province and kept control of local administration. Though they gradually absorbed most of the powers of the older officers, the king did not agree to Colbert's project of abolishing the old offices, as too many interests and privileges stood in the way. The diplomatic service was reorganised and administration of justice was made impartial. Another evil which Colbert was unable to remedy was the fact that, though the nobles had lost all political powers, they retained their social privileges, collected from the peasants oppressive dues and monopolised the higher posts in the army and the church. This evil was too deep-rooted to be remedied.

The king himself needed money and could not reduce the direct taxes. The great financial surplus built up by Colbert was dissipated in his pomp, wars and deliberate adoption of bribery as state policy. While the higher classes lived in splendour, the masses lived in squalor. Louis XIV, in spite of the splendour of his reign, may be regarded as the chief author of the fall of the *Ancien Regime.* His many wars and the extravagant expenses inflicted a crushing burden on the people. The historian, Van Holst remarks : "If it be asked who did the most towards the destruction of the *ancien regime,* the correct answer is, beyond all question, Louis XIV, its greatest representative." The price of his long wars was a heavy one for

France. Besides impending bankruptcy of government, there were serious abuses in the government and the idle upper classes kept invidious privileges. But for the time being, the French middle classes of merchants, lawyers and officials, who were the really powerful element in France, supported royal power, being dazzled by the splendour of Louis XIV, and the reasonable efficiency of the government.

Though France made great sacrifices in the wars she waged under Louis XV, the government of that ignorant and bad king and his feeble administration spoiled her success. France was opposed by great leaders like Frederick the Great of Prussia and Pitt the Elder of England. At the end of the "Second Hundred Years' War", to use the term of Seeley, France lost her position as a colonial power. The Napoleonic wars, in their Anglo-French phase, were only a continuation of this commercial and colonial war.

The Monarchy and the privileged classes were no longer feared and no longer considered necessary. The government of Louis XV itself gave a handle to the feeling against old institutions. The relations between the government and the Parlements became strained. Finally, Louis abolished them and set up a new system of courts. But this only roused indignation and Louis had to restore the Parlements. This attack on an ancient institution strengthened the belief that the old institutions were no longer necessary and led to a feeling that the government itself should be altered.

The French absolute monarchy found imitation in Europe throughout the seventeenth and eighteenth centuries. Royal power was buttressed by the theory of the divine right of kings. National patriotism also regarded the king as a leader of the nation and took pride in his greatness and glory.

SPANISH ABSOLUTISM

In Spain, the king held absolute power and the Royal Council with its many branches looked after the government. By the reign of Charles V, the old assemblies, the *Cortes*, had lost most of their powers. Philip II's rule completed the centralization of the government. But, in spite of this apparent power, Spain began to decline after him. The causes which weakened Spain were as follows: (1) Political despotism was combined with religious intolerance. The Inquisition in Spain became an instrument of the king to crush new ideas. No free thought was allowed. By the middle of the seventeenth century, Spain was plunged into intellectual lethargy. The king also used the Inquisition to punish political offenders and to extort money. (2) The Spanish financial system was one of the worst in Europe. The nobles and the clergy were mostly exempt from taxes. The government resorted to resources like selling legitimacy to people who were born illegitimate and collecting house-to-house alms for the king. Taxes also ruined industries. The collection of revenue was also corrupt and involved much expense merely

for collection. Further, for two centuries, Spain was concerned with vast enterprises like the conquest of America, dealings in Italy and in numerous wars like the Thirty Years' War, the Dutch War, and the war with England. These imposed terrible burdens on the resources of Spain. So, Spain was verging towards bankruptcy. (3) Pollard in his *Factors in Modern History* points out that the nobles declined to adapt themselves to serving in any post except the army or the high offices. In fact, there were more generals than soldiers by the end of the seventeenth century. The middle classes were denied proper outlet for doing service to the state. Even these classes were important only in Catalonia. (4) Economic prosperity was affected by the depression of the industries owing to the foolish policy of taxation. Spain also was so far away from the industrial centres of Europe that it never developed manufactories of her own. Further, the people who were trained to love a military career developed a lordly pride and indolence which held manual labour in disrepute. (5) W. T. Arnold in his *Studies of Roman Imperialism* points out how geography broke up Spain into separate sections owing to the interposition of mountain ranges. This led to the persistence of local and provincial feelings in the different provinces. The seclusion of Spain and policy of the government shut off new ideas and led to stagnation. (6) The Spanish Empire greatly injured Spain. Her richest provinces, the Netherlands, were lost and her American colonies entailed a great cost to preserve them. In spite of their wealth, there was no surplus owing to unwise administration. The barrier of the Pyrenees isolated Spain, and she might have had her own independent history had it not been for this empire. She could not defend all her empire with her soldiers. The empire was separated by great distances and by the sea. Spain could not organise a navy powerful enough to protect it. English and Dutch seamen who defied Spain adopted new ideas of sea warfare unknown to the Spaniards. The defeat of the Armada meant the fall of Spanish sea power. She could not keep her monopoly of trade with her colonies, and large smuggling began in the colonial trade.

Philip V made an effort to improve the administration. Charles III (Don Carlos, as a prince), like other enlightened despots, protected domestic industries, improved communications, reformed education and tried to control the church. But, after him, stagnation again stepped in.

PRUSSIAN ABSOLUTISM

Absolute monarchy also developed in Prussia. At first sight, Prussia appears in her origin as an artificial state in which many different parts were brought together by accidents of marriage, inheritance, diplomacy or war. Yet, Prussia became important, because she was the most national of the great German states, though other states like Austria might have been older. The development of the Prussian monarchy was chiefly due to Frederick William, the Great Elector (1640-88). One of the typical representatives of

absolute monarchy, he ruled for nearly half a century. He was strong and resolute and devoted to the interests of the state. He bequeathed to his successors a tradition of strong centralised authority. He laid down three lines of policy which his successors followed : (1) High degree of centralization in government ; (2) systematic development of the economic prosperity of the state ; and (3) utilisation of these economic resources for the upkeep of a strong army, which could be used for further conquests. The problem he had to face was that these possessions were in three territoral groups : (1) The Cleves region which formed the earliest of the Prussian possessions in the valley of the Rhine ; (2) the Brandenburg region in the middle and ; (3) the Prussian territory in the east. These groups were isolated from each other. Each had its own government and its own army. In each, there was a separate diet consisting of feudal nobles. Only the ruler was common. Frederick William abolished the diets and merged all the three governments into one. The separate armies were also united into a single powerful force. This was the chief source of his power. The economic prosperity of the land was increased by planting colonies in East Prussia. Thus, he welcomed Huguenot refugees from France to Berlin and gave them privileges so that they could stimulate the agriculture and industry of the country. The development of Berlin was also largely due to them.

The power of Prussia was further increased by Frederick the Great. He inherited and strengthened the traditions which had come to him from his predecessors. (1) Militarism. Prussia was a military state and had a larger army than any other state. The major part of the revenues of the state were spent on it. The king himself supervised its efficiency. Even the education of the people was utilised for military needs. (2) Bureaucracy. Prussia was administered by a large body of officials whose efficiency was supervised by the king. (3) Dominance of the landlords. The land magnates, called the *Junkers*, monopolised the army, the civil service and the church. (4) Paternalism. The king developed economic prosperity by fostering agriculture and industry. Note, however, that though Frederick greatly improved his state, he did not make all classes equal before the law. He imposed heavy taxes on the poorer classes and did not touch the privileges of the nobles, nor did he relieve the peasants of serfdom.

RUSSIAN ABSOLUTISM

In Russia, absolutism was consolidated by Peter the Great, who based himself on the German government, helped by the philosopher, Leibnitz. The old Russian assembly of nobles, called the Duma, which restricted royal power was abolished. In its place, an advisory council was set up. The nobles were reduced to subjection and forced to serve in the army or the civil service. Government was organised into departments and the foundation of the Russian bureaucracy was laid. We have the beginning also of a secret police. The villages, however, were allowed to keep their old elective councils called the *Mir*. A new coinage was issued and a postal system set

up. Economic prosperity was promoted by building roads and canals, opening mines and encouraging commerce and industries. Elementary schools were set up. Though these were meant for the purposes of training engineers and the officers wanted by Peter, they heralded the introduction of western science and education into Russia. His reforms, however, meant huge expenditure and the bulk of the money was spent on the army and the navy. Taxation pressed hard on the peasants who formed the bulk of the population. The peasants were serfs who were practically in the position of slaves under their landlords.

The Russian Church became independent of the Patriarch of Constantinople after the Turks captured Constantinople. It still retained some contact with the Patriarchs of Constantinople, Jerusalem and Alexandria. Its doctrines also continued as in the eleventh century. It was governed by a Patriarch at Moscow who was elected by the clergy. It developed into the position of a state within a state. The Patriarch behaved like the Pope. He interfered in secular matters and tried to control temporal power. Peter the Great abolished the Patriarchate and set up in its place a Holy Synod, consisting of bishops chosen by him and presided over by a layman appointed by the Tsar. Though in doctrines the church continued to be, as before, a part of the Eastern Church, in organization it now became a department of the state. The removal of the restraint of the church on the Russian monarchy made it unlimited. It was only after the Russian Revolution that a Patriarch has once again been allowed to be elected.

Turkey was another absolute monarchy of a different kind. The state continued as a military empire. The Sultan had absolute authority. He held also religious supremacy as the Khalif. His ministry, called the *Porte*, was interfered with by the household officials of the Sultan. There was corruption in the services and in the administration of justice. Even offices were sold. The provinces were ruled by governors called Pashas who often defied the Sultan. The decline of Turkey was due to the following causes : The Sultans became the slaves of the harem. The *Janissaries*, who were the body-guard of the Sultan (like the *Praetorian Guard* at Rome or the *Varangian Guard* of the Byzantine Empire), had degenerated and lost their discipline. Diversion of trade to the new trade routes affected the economic prosperity of the state.

After the sixteenth century, Turkey entered on a long period of stagnation. In the latter part of the seventeenth century, the Turks tried one more attempt to expand on the west ; but they were beaten off. They did not possess modern weapons and the reformed tactics of war which the West had learnt.

OTHER ABSOLUTISMS

In 1661, Frederick III of Denmark reorganised the constitution on the French model. He set up an absolute monarchy, diminishing

the powers of the nobles. Sweden followed this example in 1680 under Charles XI. Before him, Sweden, alone of all countries of Europe, had a constitution like England and a long tradition of limited monarchy. Gustavus Adolphus strengthened, in 1611, as the representative organ of the nation, an assembly called the Riksdag.[1] Before him, its position was vague and uncertain, though it dates to 1435. Now its existence became well established. It consisted of four estates, each of which voted separately. Unlike the English Parliament, its power was weak. It entirely depended on the king and supported royal power. Charles XI modernised the government. A later king, Gustavus III, reorganised the army and the navy, abolished the privileges of the nobles and ruled with the support of the middle classes. Under the influence of French philosophy, many despots embarked on progressive reforms. John V of Portugal (1706-50) built fine buildings and libraries at Lisbon and protected old monuments. His successor, Joseph I (1750-77), helped by a great minister, Pombal, crushed the power of the nobles, expelled the Jesuits, reorganised education under state control, set up new industries and promoted trade. But Pombal was overthrown on the death of the king and his work disappeared. There were some exceptions to this general tendency towards absolute monarchy. In England and Holland, a wealthy middle class resisted absolutism. But even here, there were strong monarchical parties which borrowed their principles from France. Poland was another exception. The republics of Switzerland and Venice were also exceptions.

POLAND

Poland had a constitution which had survived from the age of feudalism. The country extended to the Baltic between East Prussia and other German areas and again to the east of Prussia. It included, besides modern Poland, Lithuania, Danzig, a large part of Latvia and Ukraine. The people were of many races. Besides Poles, there were Germans in West Prussia and Lithuania. There were Russians in Lithuania. There were also different religions including Protestantism, Catholicism, Greek Church and Judaism. Her further misfortune was she had no definite frontier like sea or mountains. On the east, she projected into regions inhabited by Russians. On the west, she extended into Germany. So, foreign interference was made possible which was helped by the religious divisions of the people. Her constitution also promoted anarchy. In the struggle between monarchy and the nobles, the nobles won and reduced royal authority to the mere shadow of an elective monarchy. Its serious defects were : (1) The king could not be strong. (2) Rival candidates would emerge at every election and would promise concessions which would further weaken royal power. (3) Every election would involve the land in war and intrigues of foreign powers. As Wells points out in his *Outline of History*, like the Greeks of old,

[1] In 1935, its 500th anniversary was celebrated. It was only in 1866 that the four estates were replaced by a bicameral legislature.

every dissatisfied Pole ran away to some foreign enemy to wreak vengeance on his own country. (4) The weakness of the monarchy led to the great power of the nobles, who oppressed the masses of the serfs. (5) The king could do nothing without the consent of the Diet which consisted of the nobles. The Diet could never transact any business because even a single noble could exercise the *Liberum Veto* by which he could veto any measure he did not like. He could even object in this way to the meeting of the Diet, and the Diet was at once dissolved. Under these circumstances, Poland suffered from the internal conflicts of the selfish nobles. This also helped ambitious foreign powers who did not want Poland to be strong or united. Faced by the ambition of Russia, Austria, and Prussia, the Poles made a determined attempt after 1792 to frame a new constitution which abolished the Liberum Veto, made the Crown hereditary and established a parliament. But the opponents of reforms appealed to Russia and, with its help, restored the old constitution. Finally, in 1795, Poland was partitioned between Russia, Prussia, and Austria.

SWITZERLAND

The history of the origin of Switzerland begins in the time of the last Hohenstaufen rulers. In the thirteenth century, there was no such country. The land was part of the old duchy of Swabia. Just like the other parts of Germany, it was divided amongst feudal magnates. But a mountainous land, with its difficulties of communications is never completely feudalised. The people there being more independent, serfdom also never takes a deep root. Thus free communities developed both in the towns and the villages called cantons. These communities kept up many of the old Teutonic institutions like meeting of the freemen to decide their affairs. The people gave only nominal submission to the empire. But when the feudal lords began to impose restrictions on their freedom, they became discontented. Among these feudal lords was the Count of Hapsburg (so called from the castle of Hapsburg in Switzerland which formed the cradle of the house). Irritated by oppression, the communities formed various leagues from time to time. Emperor Frederick II gave the two cantons of Uri and Schwyz immunity from his sovereignty. But, in 1273, Rudolf the Count of Hapsburg, became Emperor, and tried to exercise direct power over the area. His death in 1291 was the signal for the first Perpetual League in which Uri, Schwyz and Unterwalden joined together. This was the beginning of the Swiss confederation. From then began a long struggle between the people and the Hapsburgs. One advantage was that now the Hapsburgs were simply the Dukes of Austria, for the imperial position was occupied by the House of Luxembourg which was unfriendly to the Hapsburgs. An Austrian force which invaded the area was defeated at Morgarten in 1315. This victory of simple country folk who were then of little account was the first victory of the peasants over feudal cavalry. Legends have gathered round the heroes of the war like Tell. By the middle of the fourteenth century,

the confederation expanded to include eight cantons. In 1386, another Austrian army was beaten at Sempach and this victory saw the heroism of Arnold of Winkelried. The Swiss were born soldiers and these repeated victories developed their warlike spirit and made their independence secure. Another Austrian defeat at Nafels in 1388 forced the Duke of Austria to recognize their independence practically in 1412. In 1499, Emperor Maximilian went to war with them but suffered defeats. Finally, in the treaty of Basel, he freed them from all imperial jurisdiction, though they remained in name a part of the Empire till the treaty of Westphalia. Without a central government, the confederation persisted owing to Swiss national patriotism kindled by the common hostility to the Hapsburgs.

HOLLAND

Originally, all the seventeen provinces of the Netherlands which were under Spain had concluded a compact called the Pacification of Ghent, providing for a States-General representing all the provinces under Prince William of Orange. The ultimate suzerainty of the king of Spain was recognised. But the Spanish general, Don John of Austria, and his nephew, the Duke of Parma, fanned the differences between the Protestant provinces of the north and the Catholic provinces of the south. Hence, the ten southern provinces separated and made peace with Spain in 1579. In the same year, the seven Protestant provinces formed the Union of Utrecht which marked the foundation of the first federal state in Europe called the United Provinces, and which later became the kingdom of Holland.

In 1581, the United Provinces issued their Declaration of Independence. Important principles were stated in it, forecasting later trends in America and France. The ultimate division of the Netherlands also began. Portions of the south were later absorbed by France and the rest finally developed into the modern state of Belgium. Parma who could have easily crushed the United Provinces, had to waste his time waiting for the Armada to transport him to England. Again, he was ordered to France to help the Catholic League against Henry of Navarre. Finally he died.

All the provinces of the new state had to follow a single foreign and military policy. But each province was a federation of the oligarchical municipalities which were dominated by the burghers. The government of the province was entrusted to a provincial assembly or estate, headed by a Stadtholder. The Stadtholder was, originally, the representative of the king of Spain. Each state had, therefore, its own government. The central authority consisted of the general assembly called the States-General which consisted of envoys elected by the provincial estates.

Its jurisdiction was limited only to common purposes, and it could act only if all provinces were unanimous. There was a Council

of State which looked after the executive government subject to these restrictions. Motley, in his *Rise of the Dutch Republic*, points out that the sole immediate object of the constitution was "defence against a foreign oppressor." The constitution was very clumsy, complicated and difficult to work. There was a Captain-General for the army and an Admiral-General for the navy appointed by the centre. But the provinces retained all local government and the important right of electing their own Stadtholder, voting money and deciding on peace and war. That the constitution managed to survive was due to the following causes : (1) All the provinces were of unequal size and wealth. The province of Holland was predominant over all others in wealth, importance and population. It supplied half the annual budget. Its chief city, Amsterdam, was the most important. Hence, its Stadtholder became so important that he soon came to hold the post of Stadtholder in all the provinces. (2) William of Orange and his successors owed their power to the prestige of the house. They were also supported by the common people who had no voice in the administration. The house of Orange relied on the unenfranchised citizens in the town and the peasants in the countryside as against the burgher oligarchies of the big towns.

From 1584, when William of Orange who led the revolt died, to 1651 when William II died, we have a succession of princes of this house. It became the custom, though not the law, for the head of the house of Orange to be elected Stadtholder Captain-General and Admiral-General, of all the provinces, though the office was strictly a provincial one. By 1647, the house of Orange thus tended to become a hereditary monarchy and was united with the English royal family by the marriage of William II to Mary, daughter of Charles I. But, the burghers of the great towns stood for provincial independence and a republican constitution, and they controlled all political power in the provinces. William II failed to convert his position into a hereditary monarchy and died in 1651, leaving a young child, the later William III. The wealthy middle-class burghers now revised the constitution in 1651, abolishing the Stadtholder and making the oligarchy supreme. Power was practically exercised by the burgher leader, John de Witt. The attack of Louis XIV on the republic in 1672 ended his power. The military danger spontaneously called William of Orange to power. He became the Stadtholder of five out of the seven provinces, being elected hereditary Stadtholder in all the important provinces including Holland. The power of the office so much increased that after him, the Netherlands was a republic only in name. Under his rule, Holland became the great champion of political freedom against Bourbon despotism and it was William of Orange who also rescued English liberty in the Revolution of 1688 and became king of England. On his death in 1702 the burgher oligarchy was restored. But, in 1748, another prince of the house of Orange, William IV, was made hereditary Stadtholder in all the provinces. Thus the republic became practically a hereditary

monarchy. The constitution was revised in 1848 and 1887 in a unitary direction, and the only trace of the old federalism now is in the composition of the Second Chamber.

THE MUGHAL EMPIRE

Baber's ideal was not to be a sultan enjoying supremacy over autonomous provinces, but a *Padishah* with the divine right pertaining to descent from Timur. So, the Mughal ruler did not assume the title of sultan. The Delhi Sultans and later Sher Shah had built up an administrative system which could be used by the Mughals. The Mughal state reached its height under Akbar. Qureshi calls attention to the fact that "it was Sher Shah who started anew the administrative machinery of the Sultanate. Akbar's officials had only to add a wheel here and adjust a lever there."

The state was a highly centralised autocracy, the crown being the motive power of the whole administration, and the government was supported by a strong army, a well-filled treasury and close control of the nobles and officials by an efficient secret service. Akbar ignored further the traditional religious restraints on monarchy. He gave up the idea of a purely Muslim state and secured the support of the Hindus. The *Kalima* disappeared from use in the coinage. A policy of marriage alliances began with the Rajput princely families.[1] Akbar was considerate. The "Infallibility Decree" of 1579 authorising the emperor to decide any question regarding Islam was meant to check the influence of the Ulemas on the power of the ruler. It was only later on under Aurangzeb that these measures of Akbar were given up, and the state again became a Muslim state.

Over-centralization led to the dependence of the government on the emperor's personality. Dr. Ibn Hassan (*The Central Structure of the Mughal Empire*) shows how it declined when there were no rulers of Akbar's ability. Akbar led a life of strenuous routine. All important matters had to be submitted to him. He held three daily meetings, one in open court, another for non-routine work, and a third in the night or afternoon. The memoirs of Jahangir refer to the emperor weighing himself against gold on birthdays when nobles made presents. The elaborate court life is illustrated in contemporary paintings. Magnificent court life meant costly dress and jewellery. Even houses of courtiers were palatial and sumptuously decorated. Coronation festivals were pompous. The Festival of the New Year was another grand occasion. Jahangir notes in his *Autobiography* that royal horses and elephants were decorated during the *Dasara* festival. The paraphernalia of the emperor included the *chattri* (umbrella) yak-tail standards, the drum, aigrettes and plumes and ornaments. Such was the routine set up by Akbar that *Zabita mast* (this is not the custom) became a tradition under his successors.

[1] Tod gives the text of a treaty made by him with Bundi (a treaty made after Amber became an ally of Akbar) in which the Rana of Bundi was exempted from sending a bride to the emperor.

Robes of honour (*Khilat*) were manufactured in the state factories to be presented to courtiers and nobles on *Navroz* (old Persian New Year's Day) and the emperor's birthday or when they were presented to the emperor or appointed to any post. Court life was hedged round with elaborate ceremonial and etiquette. Even Aurangzeb could not do away with the pageantry of gorgeous *durbars* attended by richly dressed courtiers[1].

Akbar radically departed from the administrative arrangement in the ordinary Muslim state by diminishing the importance of the *Wazir* who was till now all-powerful in the government. He set up four ministers of equal rank. (1) The *Vakil* or Prime Minister. This office was one of dignity, but not of much power. (2) The *Wazir* or *Diwan* who was confined to financial administration and supervision of provincial administration. (3) *Khan-i-Zaman* who looked after the royal household and (4) *Bakshi* who looked after military accounts. He had to see that military officers actually maintained the contingents required of them and kept proper accounts. In practice, the Diwan and the Bakshi had all civil and military powers. With the growth of the empire, the number of *Bakshis* increased. By Aurangzeb's reign, we have a *Mir Bakshi* (Chief) with three assistants.

The *Daroga-i-Ghusal Khan* was the private secretary of the emperor, and the *Arz-i-Muqarrar* revised imperial orders and submitted them a second time for imperial assent. The *Khan-i-Zaman* administered the rules regarding work and wages in the royal factories (*Karkhanas*) where skilled workmen were recruited under daily wages and worked under a superintendent (*Daroga*) as the state usually manufactured its own needs here. He looked after the daily expenditure of the emperor. He was helped by the *Bayutat* who looked after escheats.

The *Wazir* or the *Diwan* was the chief minister. His seal and signature were essential to validate all official records including the *firmans* of the emperor. His office was the Public Record Office. All records were kept in the *Daftar-Khana*. The *Diwan* minutely controlled the provincial *diwans*. He also received regular reports on the state of the provinces. The *Diwan* was helped by two assistants. (1) *Diwan-i-Tan* (of salaries) who looked after the orders (*parwanahs*) relating to grants of *jagirs* and ranks of the officers (*Mansabdars*). (2) *Diwan-i-Khalsa* (of crown lands) who looked after the posting of provincial officers like the *Subadars*, *Faujdars*, *Amins*, *Daroghas*, *Khazanchis* of treasuries etc. He also looked after recovery of loans advanced by the State (*Mutaliba*) and agreements made by officials to carry out certain duties (*Muchilikas*). The finance department was elaborately organised.

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[1] Even after British rule was set up in Delhi, the Fort was outside their jurisdiction. The emperors held their processions on elephants and their primitive sport of cock-fighting.

The Emperor was the fountain of justice[1] in open court. But, only a few cases reached him. The Chief *Qazi* tried criminal cases according to the *Quranic* law and appointed provincial *Qazis*. Sarkar condemns the *Qazis* as corrupt. Even in the provinces, there was no lower court below the *Qazi* of the province. The governor tried political offences and supervised criminal justice. The provincial *Qazi* who looked after civil justice had a vast jurisdiction and no assistants. Akbar set up for the Hindus courts of Muslim judges helped by Brahman assessors and following Hindu Civil law. But criminal law was common and based on Muslim law.

The minor officials included the *Munshi* (Private Secretary), *Mir Bar* (in charge of forests), *Mir Manzil* (Quartermaster-General) etc. There was an elaborate *Daftar* (Record) system. Payments were made only when a *sanad* (written authority) was shown. Debit and credit departments were separate. Registers kept by clerks were all supervised. Unexpected inspections and verifications of cash balances were carried out in the provinces to check corruption. There were forty-two mints in different parts of the empire under special officials. There were officials in charge of the Royal Household including the harem. Under the Daroga of Intelligence and Posts worked the *Waqia-Nafis* (official newswriters), *Khofa-Nafis* (who reported secretly and directly) and the *Harkarahs* (secret service men who reported orally). There were treasurers and accountants for the kitchen department, which employed a large number of cooks, tasters and servants. As in Hindu political thought, Muslim ideas also regarded education as the field of religion. The *Padishah* supported schools which were run by mosques or by holy men.

The lowest grade of officials took rank as commanders of ten horses, and the highest, commanders of ten thousand. The grades from the command of ten to five thousand were called *Monsabdars* and those from five thousand to eight thousand *Ain-ul-Umaras*. Those above eight thousand were reserved for royal princes. In the higher ranks of the civil and military service, the majority were Persians[2] and Afghans. Even under Akbar, the official lists in the *Ain-i-Akbari* show that only an eighth part of the higher officials were Hindus. Except for revenue, there were no specialised departments like medical or educational. Till Akbar's time, the officers were remunerated by assignment of *jagirs*. Akbar paid salaries. But the *jagir* system came back soon. The *jagirdar* held a *Mansab* (a military rank) and hence was called *Mansabdar*. *Mansabdars* of higher grade were usually appointed governors of provinces.

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[1] Jesuit writers record that Akbar was accessible to all people—great or small.

[2] The Persians were the most numerous of the refugees who fled to India before Mongol inroads. They came to dominate all learned professions and public services. In the same way, Persian men of letters and theologians influenced culture.

The army was recruited and controlled by *Mansabdars* of the military service.[1] Hence, the army was separated from the Emperor and facilitated intrigues of commanders against the Emperor. The number of men brought by the Mansabdar usually fell short of the number indicated by his rank. The permanent regular army was small and paid directly by the emperor (*Dakhli*). According to Badauni, they consisted of 12,000 in infantry and 13,000 in artillery. There were also the *Ahadis*, soldiers from youths of good families. Bernier has a poor opinion of the army. Father Monserrate, who accompanied Akbar's expedition to Kabul, describes the pomp and magnificence of the camp which was a veritable "moving city". Supplies were provided by nomadic tribes of Banjaris. As most of the army was supplied by the nobles from the revenue of the *jagirs* given to them for that purpose, after Aurangzeb, when under weak emperors, the nobles treated the *jagirs* as their own, the army suffered in number and quality.

Akbar, who was skilled in mechanics, directed particular attention to the artillery. The stables housed fine horses from Arabia, Sersia and Turkistan, camels, mules and elephants and there were separate departments for their upkeep. The arsenals and military workshops were under special officers. The artillery was under an officer called *Mir Atish*.

The province was under a *Subadar* or *Nawab Nazim* (officially called in Akbar's time as *Sipahsalar*).[2] The sultans had failed to create a uniform, efficiently organized provincial administration. Even under Sher Shah, the local units were small. Akbar consolidated the fifty-one administrative units of Sher Shah into twelve provinces and set up in each province a uniform administration, co-ordinating all administrative agencies in it. Before the end of Akbar's reign, his conquests in the Deccan added three more provinces. But he placed them under one governor and this practice of entrusting a number of provinces to one governor was extended elsewhere by later emperors. A governor who was in charge of a number of provinces had deputies in those provinces except in the province where he resided. The governor had no power to make war with surrounding powers without the emperor's leave and the emperor had to ratify any peace terms concluded by him. The *Diwan* who was in charge of finance was responsible only to the emperor. Fortified strategic places in the province were under officials directly responsible to the emperor. Governors were often transferred. They were checked by imperial visits or imperial commissioners. Confidential news-

[1] Abdul Aziz (*The Mansabdari System and the Mughal Army*), who traces from the times of Timur and Chingiz Khan, points out that even the Mansabdar of 5000 received per month Rs. 18000 (corresponding to a lakh of rupees in 1914). Hence, foreign adventurers flocked from western Asia. Unlike Sher Shah, Akbar did not recruit the army directly, but through Mansabdars. Smith observes, his military organization had in it the seeds of decay.

[2] A simple title of honour.

writers (*Waqia Nafis*) also sent secret reports to the emperor. The governor received larger salaries than modern governors and lived in pomp.

Maritime provinces had, besides governors, collectors of customs (*Mutsaddis*). Frontier provinces had also *Thanadars* (garrison commanders) in strategic places. The sultans anticipated Lord Curzon in creating separate frontier provinces controlled by the centre. Sher Shah set up special frontier forts. Akbar occupied Kashmir, Kabul, Kandahar and Sind to guard the frontier.

All the provincial officers had a well-organized staff with regular hours of work. The *Diwan* looked after revenue. The *Bakshi* looked after the needs of the army in war, and his staff held the annual inspection of horses. The *Diwan-i Bayutat* was the respresentative of the *Khan-i-Zaman* in the province and looked after roads, buildings, state workshops and stores. The provincial *Qazi* administered justice. The provincial *Sadr* (an office often united with that of the *Qazi*) looked after state charity and patronage of scholars and theologians.

The provinces were divided into districts (*Sarkars*), each under a *Fojdar* nominated by the emperor. Moreland believes that there were two parallel authorities in the district. The *Sarkar* was the unit for revenue administration and the *Fojdari* for the general administration. Dr. Saran denies this and says there was no diarchy in the district, unlike the province. There was a considerable district staff. The districts were divided into units called *Parganas* or *Mahals* under a *Chaudri*. The *Chaudri* was the headman. The hereditary accountant (*Qanungo*) recorded the revenve accounts of this unit.

There was no resident officer in the village where the headman and accountant who had survived from olden times looked after village affairs. The *Kotwal* who kept order in towns is still a familiar figure in some big cities of North India.

The jurisdiction of the *Fojdar* was too large and he could attend only to widespread disturbances like minor revolts or depredations of dacoit gangs. So, the village community was ordinarily responsible for security of the village and the adjoining roads. The *Amil* (revenue collector) inspected the registers kept by the *Muquddam* (headman) and the *Patwari* (accountant). The *Amil* was helped by a large staff of subordinates to help in land survey and assessment. The *Amil* was expected to consider himself as the natural ally of the ryots, interpret the orders of the state to them and keep careful accounts to be sumitted to the emperor. He also advised the grant of *Taqavi* loans to ryots.

The extensive empire led to centrifugal tendencies owing to the ambition of provincial governors under weak emperors. Transfer of governors and other officers made each try to enrich himself as much

as possible in his turn. There was no hereditary nobility, as property of nobles escheated to the crown after their death. This fostered extravagant luxury. In practice, noble families persisted, as the emperor generally restored parts of the estate. Later Moghul paintings do not depict nobles as warriors or as statesmen, but as enjoying indolent ease, surrounded by dancing girls and musicians. This tendency was increased by the position of the Muslims as the dominant race of rulers which led to pride and laziness. All this led to the fall of the empire.

The central revenue consisted of the following : (1) Monopoly of particular commodities like salt petre which was an essential constituent of gunpowder of the period and was got from scrapings of the plentiful supplies of earth containing nitrates from early times, leading to a brisk trade in it. (2) Tax on salt of all varieties—rock salt, lake salt and sea salt. But the impost on it was not uniform. This tax was levied by the Mauryas and the Guptas also. (3) Escheat of property of officers. (4) Costly presents made to the emperor by nobles and officials on various occasions and by foreign travellers. (5) Customs. These were low in theory (5% and below) : but the charges were increased by arbitrary revaluation, extra charges for rapid clearance and corruption. (6) *Zakat* got from Muslims (quarter of a person's annual income) meant to be used for building mosques, helping pious Muslims, relieve the Muslim poor etc., though the money was often spent for the state or the personal needs of the ruler. (7) *Jizya*. This was abandoned by Akbar, but revived by Aurangzeb. (8) Land revenue which was the most important. (9) The *Abwabs* (exactions on various pretexts) included duties on sale of the produce or property, commissions levied on various transactions, license fees and forced contributions. By the time of Aurangzeb, the revenues of the state were increased by the tribute from the Deccani Sultanates. But our sources seem to confine themselves only to land revenue. Bernier and Manucci distinctly say that they give only the returns about land revenue. According to the *Mirat-i-Alam*, a fifth of the total land revenue was saved after all expenses were met. Besides land revenue and the cesses on it, the peasants had to render free labour on roads and irrigation works. There were other imposts. But we have no records about receipts from these imposts and from presents. Moreland hazards the view that these might have been double the land revenue.[1]

Land revenue policy of the Mughals is important, as it was based on the old Hindu system with some additions and improvements and this, in turn, was imitated by other states later on like the Maharashtra state of Sivaji. There were three different kinds of assessment (*Paimash*) : (1) The yield was estimated before harvest and the

[1] Abdul Aziz (*Imperial Treasury of the Indian Mughal*, 1942) believes that the land revenue alone under Akbar was nine crores. The *Badsha Namah* in Shah Jehan's reign estimated the total revenue of the empire as twenty-two crores

cultivator paid a share which would vary from season to season according to the yield and according to the area cultivated. (2) Irrespective of the area of cultivation or the yield, the peasant had to pay a stipulated sum. (3) A fixed charge is made according to the area cultivated.

In certain cases, Hindu chiefs paid a fixed tribute to the emperor and collected the revenue for themselves, and were subjected to punitive action if they defaulted. Sometimes, certain revenue farmers paid a lump sum to the emperor and collected the revenue for themselves, but they were not hereditary till the eighteenth century. Certain areas (Khalsa) were directly managed by the state. But, till the time of Akbar, revenue collection was left to intermediaries. Payment was in kind or cash and generally varied from a third to a half.

Sher Shah, who had practical experience in assessing and collecting revenue, wanted direct dealings with the ryot. He divided the land for each staple crop into good, average and bad and had the yield calculated separately for each class. The revenue demanded was a third of the average of the total yield thus calculated. Akbar started on this basis, collecting the revenue in cash according to the price of the season and in the area. But, in the fifteenth year of his reign, he gave up the scheme of assessing for the whole empire in favour of assessment separately in each pargana, so as to allow for local differences. Todar Mal first tried this method in Gujarat in 1573-75 and, under his advice, it was extended throughout. A standard measure (*Jarib*) was set up, being a chain of 60 *gaz* (a yard of about 33 inches ; but, some think that the length of this is uncertain). A land of 3600 square *gaz* was the *bigah*. Akbar set up a standard *jarib* in place of the former *jarib* which had been of varying dimensions. On the basis of this measure, a cedestral survey was ordered in 1574 and, in accordance with it, the assessment was fixed, taking into account the method of cultivation, the locality and the crop. The revenue thus fixed in kind was collected in cash on the basis of the average price for the previous ten years. The area under each crop had its own rate. Abul Fazl's condensed tables reveal a multitude of rates. Royal officials recorded the area cultivated by the peasants, crop by crop, and fixed the assessment due according to rules. The system was elastic, because it allowed for injury to crops and failure of cultivation and provided for remissions in emergencies. Extension of cultivation and improvement in the crop were encouraged by reduced assessments. Loans were granted to extend cultivation. Peasants were encouraged to pay the revenue in person in the local treasury and get a receipt. V. A. Smith, who had experience of revenue administration, praises Akbar's system as sound and admirable. This regulation system (*Jabti*) prevailed in ten provinces extending from Multan to Bihar.

Under this system (1) cash rates were substituted for payments in kind. (2) They were fixed for a number of years instead of being

annual. (3) A more or less uniform system was set up in the empire, the terminology of which continues even today.[1]

The outlying parts of the empire had their own local peculiarities. In Lower Sind and a part of Kabul and Qandahar, the system was the collection of a share of each crop (*Ghallabaksh*). Bengal followed a system of estimate (*Nasaq*). In the *Zabti* area originally the assessment was fixed separately for each pargana. But, as it was difficult to fix the seasonal cash demand, after 10 years, Akbar grouped the parganas into circles and fixed assessment rates for each circle, based on the average cash assessment of that circle during the previous ten years. The total land revenue of Akbar from his fifteen provinces has been estimated at about thirteen crores of rupees. But, under Aurangzeb, it had risen to thirty-three crores.

To check dishonesty, Akbar laid down that the tax-payer was entitled to a written receipt. Besides frequent inspections, the money in the local treasury had to be counted every night, and every month a fully detailed report was sent to the emperor from the province. Whenever the amount in a provincial treasury amounted to 2 lakhs of *dams*,[2] it was sent to the imperial treasury.

In 1573, Akbar decided to discontinue grant of *jagirs*, and pay salaries in cash. He divided the country into circles each yielding a crore of dam (Rs. 250,000). An officer called *Amalguzar* or Amil (popularly called Karori) was posted to each circle to develop its agriculture so as to make it yield a crore. He had to collect the revenue and send it to the treasury. The system was not a success and led to scandals. So, Akbar reverted to assignments in 1579. Certain areas were reserved by the state and the *Diwan* looked after these through the provincial *Diwans* and their staff. These were the *Khlasa* lands. Certain lands were gifted as hereditary grants to men of learning and *ulemas*. These were the *Sayurghals*. Records show that these could be resumed at any time by the State. A new dynasty investigated proof of lawful ownership. When a *sayurghal* exceeded hundred bigahs, three-fifths of the area over hundred bigahs were returned to the state. A judge supervised all these affairs. The rest of the lands was in *jagirs*. The details of assessment and collection of revenue were left to the *jagirdars* who had, however, to follow the assessment rules fixed by the state. Jagirs were granted by imperial decree. The *jagirdar* received a fixed portion of the revenue he collected and, unless the *jagir* was a free gift, had to perform military or civil service. The grant was per-

[1] A summary of the statistical information found in *Ain-i-Akbari* is found in R C Dutt's *History of Ancient and Modern India*, Chap. 10. A good account of Akbar's revenue policy is in Pant's *Commercial Policy of the Mughals*, Chap. 3.

[2] The Dam seems to be the same as the copper Tankar. There was also a gold Dam (worth Rs. 5) and a gold Man (worth Rs. ½). The rupee was not a 'token', but its real value was equal to its face value. In South India, the gold Pagoda (worth 3½ of Akbar's rupees) was the standard coin.

sonal ; but the heir was allowed to retain the *jagir* by a new *firman* or by paying the *Nazrana*. The *jagirdar* could be removed or transferred from one *jagir* to another. Thus the bulk of the revenue was assigned to officers in service. The *Diwan* allocated these assignments. As we saw, Akbar's revenue system applied to these assignments also.

Moreland thinks that Jahangir gave up Akbar's system and returned to assessments fixed with village headmen or revenue farmers. During Aurangzeb's second viceroyalty of the Deccan which began in 1652, his minister, Murshid Quli Khan, effected a revenue settlement here in which the assessment was fixed at a fourth of the produce and took into account whether the land was irrigated or rain-fed. He modified Todar Mal's system to suit local needs ; *e.g.*, in backward areas, he accepted the old custom of fixed lump payment or of sharing the actual produce. But in other areas assessment was by survey. This helped the recovery of ruined areas. When Aurangzeb became the emperor, the assessment was raised to a half. There was pressure on the headman to extort the highest possible revenue. Bernier shows that agriculture declined owing to heavy assessments. *Jagir* system was displaced by payment of cash salaries to officers, as the progressive decline of agriculture made a *jagir* unattractive. Only one type of assignment survived – the *Altamgah* grant, introduced from Central Asia in Jahangir's time by which an official got a permanent assignment in his own village. Revenue farming increased. Even lands reserved by the state were farmed out. A class of Zamindars arose in Bengal who kept the land permanently for themselves and their heirs, paying a fixed sum to the state. In North India also appeared big landholders who held a similar position. Thus arose Talukdars who collected usually half share from the peasants and paid a part of it to the State. Authority over local areas passed to these chiefs, "peasants paying revenue to them for protection which the empire could no longer provide" This payment became subject to bargaining year by year unless it became customary.

Thus, by Aurangzeb's time, the large size of the empire and growing disorder made it more and more difficult to collect land revenue which led to the growth of revenue farmers. By the seventeenth century, revenue farming is found in South India also and became oppressive in places like Golkonda. The revenue farmers became hereditary and, in the confusion of the eighteenth century, became land magnates holding political and judicial powers over peasants in their jurisdiction. Some of them were descended from the old Hindu chiefs who had been subject to the Mughal Emperor. Others were descended from revenue farmers. Their rights were undefined and customary. The *Qanungos* who had checked their accounts became their servants in the eighteenth century.

Local revenue was derived from a bewildering variety of petty taxes and duties levied on transport, commerce and crafts, following

olden times. Though forbidden by Firoz Tughluq and Aurangzeb on religious grounds and by Akbar on other grounds, this system persisted. Though the emperors were issuing orders about leniency to peasants, lower revenue officials were corrupt and, sometimes, oppressive. Perquisites could be exacted by them for their own benefit. Forced labour was sometimes exacted. Effects of famines were aggravated owing to imperfect communications, many tolls and civil disorder in later times.

CHAPTER IV

THE AGE OF DEMOCRACY

In England, the strong Tudor Monarchy restored order. The Reformation increased its power by making it the head of the national Anglican Church. Still, the English Parliament was not destroyed, but was kept up by the sovereigns who made it their instrument. The ruler used in local government local gentry who functioned as Justices of the Peace. There was no standing army in England. Hence, the English monarchy was different from the French Absolutism.

The transition from despotism was also first in England. The middle classes represented in the English Parliament asserted themselves against the Stuart dynasty which followed the Tudors in the seventeenth century. By the Revolution of 1688, monarchy became subject to Parliament. The king's ministers or the cabinet ruled only so long as they enjoyed the support of Parliament. Thus developed the Cabinet System of Government or Responsible Government. This example of England profoundly affected Europe and influenced French thinkers like Montesquieu and Voltaire.

Locke put forward for the first time effectively the principle that balance of powers within the state is the essential condition of the welfare of the subjects. This became the accepted view of the Whigs in England. Montesquieu developed this view further in his *L'Espirit des Lois* (Book XI, Chap. 6), arguing that separation of powers is necessary to guarantee the rights of subjects[1].

Locke also justified the English Revolution of 1688 on the basis of the Social Contract Theory. The Theory of Social Contract had

[1] Montesquieu extolled what he regarded as separation of powers in the English constitution. But, even in his time, the development of cabinet government had occurred in England under Walpole. Montesquieu also failed to note the judicial aspect of the High Court of Parliament which survived in the judicial powers of the House of Lords. But his doctrine became a political gospel. It led eminent men in England like Blackstone and Burke to admire their constitution for traits which, strictly, it did not possess. It influenced U.S.A. after the War of Independence and was elaborated in the *Federalist*. It influenced the reorganization of government in France after the French Revolution. The theory failed to note that an elaborate system of legal and constitutional checks and balances would hinder the effective working of the state, and public opinion is a greater protector of public liberties than such checks. In all countries, the legislature interferes in executive work like fixing the budget and appointment of executive officials. The executive has some powers of legislation. Sometimes, the theory may have evil effects *e g.*, election of judges in U S.A. Even in a constitution like that of U.S.A. where separation of powers has been pushed to an extreme extent, political parties have harmonised the working of the different branches of the government.

its heyday in the sixteenth and seventeenth centuries, though the aims of those who held it differed greatly, the question being the extent of the power delegated and how far this was revokable. Hooker in England and Althusius in Germany gave the first definite statements of the theory, formulating the idea of an original political contract preceding the governmental compact. Absolutists like Swarez and Grotius held the theory, as also opponents of absolutism like Milton.

Hobbes, writing his *Leviathan* (1651) at the time of the Civil War in England, tried to uphold Stuart absolutism. As Ivor Brown remarks (*English Political Theory*), "What greater contract could there be than that between his unchallenged Leviathan—sovereign —and the loose conglomeration of borough, manor, guild and church which had constituted the pre-Tudor state ?" Chapter 13 of the *Leviathan* pictures the awful anarchy of the state of Nature[1] which induce men to vest unquestioned power in the state. This absolute government need not be monarchy, but Hobbes prefers it as advantageous, though he refrains from emphasizing his preference, it is clear. But, in another work written by him, Hobbes asserts explicitly his preference for monarchy. The chief mistake of Hobbes was that he did not realise that the form of the government can be changed without changing the state. Locke avoided this mistake in his *Treatise on Civil Government* (1690) which was written to justify the deposition of James II. His view of the state of Nature given in Chapter 21 of his second *Treatise on Civil Government* simply regards it as a period of inconvenience which is remedied by a contract to secure a better preservation of life, liberty and property. If the government fails to secure this protection, the contract is dissolved. Thus, unlike Hobbes who can never justify a revolution, Locke would allow it as an extreme measure. Hobbes did not realise that arbitrary control of the community by the sovereign may be as much an evil as anarchy[2].

From the sixteenth century, the theories about the Law of Nature came to be mingled with conceptions about an original "state of nature". Bryce (*Studies in History and Jurisprudence*, Vol. 2) remarks : "This newly-invented State of Nature was neither the Golden Age of Hesiod nor the *Saturnia Regna* of Virgil nor the brutish savagery of Horace. The man of the "State of Nature" was highly intelligent, and also highly self-assertive. In Hobbes, he appears as in perpetual war with his fellows. On the other hand, with Locke and most thinkers of the seventeenth and eighteenth centuries, Natural Law, being the offspring of Reason and the foundation of Natural Rights, is the ally of freedom. It is invoked under the name

[1] This view left its mark in English literature, *e.g.*, Dryden, Jeremy Taylor and Dean Swift.

[2] It was Burke who, for the first time, exposed the historical fallacy of the theory of social contract in his *Reflections on the French Revolution*. Bentham criticised its other aspects. See Chapter 13 of his *Principles of Legislation*. Though the theory influenced German thinkers like Kant and Fichte, it faded away by the nineteenth century.

of Natural Right by the framers of the Declaration of Independence in 1776 in its preamble.[1] Contemporaneously, the doctrine was being spread over the Old World by Rousseau and it presently became the basis of the Declaration of the Rights of Man of 1789. That which had been for nearly two hundred years a harmless maxim, almost a commonplace of morality, became in the end of the eighteenth century a mass of dynamite which shattered ancient monarchy and shook the European Continent."

Merriam (*History of American Political Theories*) shows that the political theory underlying the American Revolution, though confirmed and strengthened by French influences, was derived mainly from Locke and other English Liberals. The American Revolution furnished the first great example of the rise of a big federal republic in modern times. The Declaration of Independence drawn up by Jefferson and adopted by the American Congress with come modifications asserted that all men have been born equal. The new state called the United States of America had no aristocracy and no state religion. Its rise was a momentous event in the history of the world. In spite of its verbiage, the Declartaion of Independence[2] made principles till now discussed only by philosophers the foundation of the government of the New State—"That all men are created equal" and that "government derives its just powers from the consent of the governed."

Acton points out that the American Declaration of Independence emphasised current speculative thought, for it had undergone the test of experiment and triumphed. What the French took from America was this theory of revolution, not its theory of government. Many French nobles who served in America returned democrats in conviction. Lafayette learnt the saying that "Resistance is the most sacred of duties." Hamilton had declared, "I consider the civil liberty, in a genuine unadulterated sense, as the greatest of terrestrial blessings. I am convinced that the whole of the human race is entitled to it." In the same way, the principle that taxation without representation was robbery appealed to the French, particularly as the French government had acknowledged the righteousness of the American cause by joining in the war against Britain.

At the same time, we must recognise the immense influence of French philosophers themselves, particularly Rousseau, in bringing

[1] Of those who signed it, very few except possibly Jefferson, realised the true significance of these high-sounding principles. The colonists were mainly aristocrats and slave-owners. A high property qualification was continued in the states. The federal constitution of U.S.A contained elaborate precautions against direct popular influence. It was reserved only for the French to give the principles of Natural Rights immediate and rigidly logical application, as alison Phillips point out.

[2] The authors of the Declaration, like those of Magna Carta, were not democrats. As Alison Philips remarks, the Declaration was only a convenient instrument for defining the attitude of the colonists towards the mother country.

about the French Revolution. Rousseau's *Contrat Social* (1752) agrees with Hobbes in advocating absolute and inalienable sovereignty to the state, but this state is the General Will of the People. He recognises also the distinction between this and the government which is only the servant of the General Will. Rousseau's principles were conditioned by the existing *regime* in France which hampered man's natural rights. By his time, there was a romantic belief in the excellence and simplicity of primitive civilization. This pleasant state of Nature ceased with the rise of property which, according to Rousseau, was the root of all evil[1], and men have to surrender their rights to the community. The sovereign power of the People which Locke had visualised as a reserve power to be used in extreme cases is regarded by Rousseau as in permanent and continued action. Rousseau admits that, in practice, the will of the community is the will of the majority. But he has no belief in Representative Democracy. The General Will can be expressed only by an assembly in which every citizen personally votes. Hence the state should be small. His mistake lay in confusing the state with popular demands and destroying the stability of the government, as was seen in the French Revolution. As Lord points out (*Principles of Politics*), there is a real social will, though it cannot be easily defined. The deliberate, explicit and organized will of the community should not be confused with momentary passions of the populace. "It is in the educated Public Opinion that we should seek the best approximation to the General Will of the society, though popular sentiment must not be neglected."

In the *Ancien Regime*, there was no popular liberty. Royal despotism was supreme. There was no civil liberty as people obnoxious to the king could be arbitrarily imprisoned by the issue of a *Lettre de Cachet*. There was no social equality. The higher posts were monopolised by the nobles. The clergy paid no taxes and the nobles were only nominally taxed. No common law unified the land and tariff barriers separated the different provinces. The king leaned on a weakened aristocracy. Now, in this crucial hour, the government found itself bereft "of that supreme resource of improvident and imperilled authority—armed force, for the officers, influenced by the spirit of the age, like everybody else, had ceased to wield discipline and hold their men. The favourite haunt of freemasonry was in the army. Officers of all ranks mixed equally in the military lodges and nothing can be more destructive to discipline." (Acton). European powers did not intervene in the early stages when France was torn by anarchy, for, as Sorel points out (*Europe and the Revolution*), they welcomed the revolt as likely to weaken the imperialist monarchy of France which they feared and hated. Lulled by this false sense of security, they were also distracted by events like the partition of Poland which evoked their mutual

[1] There are signs, however, in the *Contrat Social* that Rousseau changed his views from those expressed in his earlier *Discourse sur l'Origine de l'Inegalite*, for he recognises certain advantages of the state over the state of Nature.

rivalries and paralysed the coalition they ultimately formed against France.

Tocqueville asserted that the Revolution was not a break or a surprise, but partially a development of tendencies at work in the *Ancien Regime*. He believes that it became inevitable when Louis XVI ascended the throne. The failure of the Revolution was also due to the causes at work before. The desire for political freedom was crossed by other objects aiming at secondary liberties. Taine, trained in the school of Hegel and Comte, took a different view. Though he is not an apologist of the monarchy, the Revolution was, to him, a violent effort to shape the future by intention and design, not by natural methods of the past. He condemns the "Natural Man" of the Revolution as a vicious and destructive beast. Acton thinks that the Revolution was much less a rebellion against despotism than against inequality. Its nature was more social than political.[1]

Lord Acton has made these adverse remarks on the excesses which followed the Revolution : "The mixed multitude became convinced that the slaughter of the obnoxious was a necessity of critical times. The crimes disappeared in the blaze of achievements. The appalling thing in the Revolution is not the tumult, but the design. We perceive the evidence of calculating organization whose managers remain studiously concealed and masked.....With Danton and his following who made the Republic, we reach the lowest stage of the conflict of opinion and come to bare cupidity and vengeance, to brutal instincts and hideous passions. The revolutionary town councillors who now come to the front are the authors of the atrocities that afflicted France during the next two years."[2]

[1] Like the disillusioned Mourier, "some noble minds in the bourgeoisie were spurred onward simply by their worship of liberty, but others rose against the prejudices of the nobility." Acton regards leaders like Layfayette, Mirabeau and Desmoulins "as swept into the movement by personal mortifications or personal cupidity."

[2] As Acton points out, the Jacobins had this superiority over their fluctuating, vacillating and divided opponents, as they fell back on the simple, intelligible and famous system of absolute popular sovereignty of Rousseau. All power should be concentrated in the hands of those who acted in conformity with popular will, and opposition was to be ruthlessly put down. The Gironde who favoured decentralization were accused of federalism Without any man straining to save them, they were easily beaten and mercilessly destroyed. "The Revolution had begun with a liberalism which was a passion more than a philosophy and the First Assembly tried to realise it by diminishing authority, weakening the executive and decentralising power. In the hour of peril, under the Girondins, this policy failed and the Jacobins governed on the principle that power coming from the people ought to be concentrated in the fewest possible hands and made absolutely irresistible. Equality became the substitute of Liberty, and the danger arose that the most welcome form of equality would be the equal distribution of property. The Jacobin statesmen undertook to abolish poverty without falling into socialism—by the royal domain, confiscated estates of emigres, common lands, forest lands, pillage of opulent neighbours etc. Meanwhile, the country was ruthlessly governed. Representatives in

Napoleon scathingly said, "What made the Revolution ? Vanity. Liberty was nothing but a pretext." Acton admits that this judgment is too sweeping, but says, "The men of 1789 longed for equality so that they might attain to power and were undemocratic at bottom, filled with a mixture of scorn and fear of the masses. The peasants, whom the bourgeois had to court during the weeks of the electoral campaign, cared little for liberty but only for freedom from oppressive rights and dues and good government. When the excesses of the Revolution discredited it in their eyes, they were ready to welcome any strong authority likely to give them peace and ensure the social and civil (not political) benefits won by the Revolution."

The French Revolution led to the promulgation of different constitutions. It has been remarked that "once having cut loose from her ancient moorings, the nation became, through many decades, the plaything of every current that swept the political sea." During the decade between the outbreak of the Revolution in 1789 and the rise of Napoleon in 1799, there were two constitutions--the first was the Constitution of 1791[1] which was formed by a committee of the National Assembly. This contained the famous Declaration of the Rights of Man. The form of the Monarchy was preserved, though its power was largely destroyed. A single chamber elected under a property qualification which included peasants but excluded the poor was set up. This was called the Legislative Assembly (*Corps Legislatif*). A law passed by it might be vetoed by the king. But, if it was passed in three successive assemblies, it was to become law. Thus, the king was left a suspensory veto. It was also laid down that the ministers of the king should not sit in the house.

This provision which was supposed to be modelled on the American Constitution was inspired by the theory of separation of powers, and by a deep suspicion of the executive. So, harmony between the executive and the legislature could never be set up. New courts of justice were set up. But, unfortunately, the judges were elected and thus administration of justice was weakened. Local

[*Contd. from p. 108*
Mission were sent out with powers to conscript men for military service, and sweep away all political, economic and religious obstacles to government policy. They were empowered later to purify the administration from adherents of federalism and suspects. These representatives worked with local popular societies extending even to the smallest villages. The Jacobin Club became the official tool. Revolutionary Committees (created in 1793) were empowered to apply all the laws of the Revolution. Louis Blanc said, 'It is a falsehood to say that the Terror saved France ; but, it is true that it crippled the Revolution'." Acton joins this unjust estimate by saying that it established the rule of a faction. "The starving multitude was to be drunk with blood." Patriotism became synonymous with Jacobinism. "France, enmeshed in Jacobin nets, was cast helpless at the dictatorship of the Committee of Public Safety."

[1] The influence of the economist Turgot is seen in his provision for the issue of unlimited *assignats* on the basis of land as security.

government was completely reorganized. In place of the old historic provinces, the country was divided into departments, named after the natural features of the region. Each department was divided into districts, and each district into communes. As these local areas became practically independent, the central government became weakened.

The Constitution thus set up did not have a long life. It perished in mob violence. A convention of 1792 prepared a new constitution setting up a Republic. This constitution, called the Constitution of the Year III (1795), like that of 1791, contained a declaration of the rights of man ; but it included also a declaration of the duties of the citizen. The legislature was to consist of two houses, the Council of Ancients being the upper house and the Council of Five Hundred being the lower house. The legislature was to be elected by an electoral college which was elected by manhood suffrage. But property qualifications were imposed both for the electors and for the candidates.

The Council of the Ancients was to be composed of men over forty. The executive was vested in a directory of five members who were elected by the Council of the Ancients from a list drawn by the Council of the Five Hundred. But the great defect was that the directors were not responsible to the legislature. Thus, here also, harmony between the executive and the legislature was destroyed. Dicey remarks, however, that this attempt to set up a semi-parliamentary executive never had a fair trial, as the times needed a man who could restore peace and order. The judges of the court were to be appointed and not elected. In the previous constitution, the members of the National Assembly were disqualified from election to the Legislative Assembly. This led to the absence of men of experience of public affairs in the new house. This defect was avoided now by the provision that two-thirds of the new legislature should consist of members of the convention. This provision led to the insurrection of Vendemiaire by the Paris mob. But the riot was suppressed. This constitution also did not have a long life. Napoleon overthrew this constitution by the *coup d' etat* of Brumaire (November, 1799).[1] His easy success shows that the old constitution was really dead before it was destroyed in form by him. A new constitution, called the Constitution of the Year VIII, was now drawn up. The Legisla-

[1] The Directory was discredited. The English blockade of French ports increased the ruin of trade and cost of living. Acton refers to the intense misery of the people, judging from the police reports published by Aulard. Workers had no employment, as all workshops were closed. The plutocracy which had taken the place of the aristocracy was corrupt and luxurious. Soldiers scorned the ruling politicians as seen in their letters. The army was now strengthened by discipline.

Nobody desired a counter-revolution. Michelet's statement that the humbler classes amongst the adherents of the Revolution alone got lands is wrong. Many small peasants and many landless peasants got lands and all peasants were free from vexatious dues. But they were never republicans and wanted only a Caesar who would guarantee protection to their property which explains the popularity of Napoleon in the rural areas.

tive power was vested in two bodies – the Tribunate and the Legislative Body. The first would discuss legislative measures, but could not vote on them. The second voted on them, but could not discuss them. The legislature possessed little power, as Napoleon realised that what France needed was a strong executive. The electoral system favoured the executive. There was a senate nominated by the executive.[1] This senate selected the members of the two houses from a special class of property-holders—the "Notabilities of France" who were elected by the "Notabilities of the departments," who were elected by the "Notabilities of the communes", who were elected by manhood suffrage. This last provision was the sole relic of democracy. Thus, the members of the legislature were indirectly appointed by the executive. The senate had also the power to veto unconstitutional laws. A Council of State nominated by the government prepared the laws for submission to the legislature and carried on the government. The executive was vested in three consuls. But the first consul really exercised all power, because he appointed the other two consuls, and these two consuls had only a consultative voice. Sieyés, who had drawn up the constitution, aimed at a balanced constitution ; but Napoleon made it the instrument of a strong executive. Harmony was obtained between the executive and the legislature, because the executive controlled the legislature. In local government, Napoleon reduced the elective bodies to impotence, and vested all power in *prefects* and *sub-prefects*, who were appointed by the consuls.

This complicated constitution logically ended in Napoleon's Empire. In 1802, he became sole consul, and in 1804 took the title of Emperor of the French. In 1807, the Tribunate was abolished and the Legislative Body had only the function of confirming the laws proposed by the executive, and voting taxes. Napoleon controlled the Council of State and the Senate. Legislative power was also in his hands. The despotism was maintained with the help of a strong army and by control of the press and education.[2]

[1] Napoleon created in the senate a new aristocracy which, he said, "should protect the sovereignty, while the democracy elevates to the sovereignty".

[2] Condorcet laid down a plan of education during the French Revolution which was later adopted by Napoleon in France with the important change that while Condorcet's great scheme of 1792 provided for a system of free education of the whole nation only higher and technical education which would serve the interests of Napoleon's state was encouraged. It was only in 1883 that elementary education became free in France, *Lysee's* Secondary Schools increased and provincial universities set up.

One great achievement of Napoleon was the issue of the Code Napoleon (1804) which profoundly influenced many European lands like Italy, Spain, Portugal and Belgium. It had effects also on the legal systems of Germany, Japan, Greece and Spanish America. It perpetuated what was best in the Roman Law and was very comprehensive. But, the mass of the citizens could neither vote nor sit in the assembly. They had tasted political rights in the Revolution.

After the fall of Napoleon, when Louis XVIII was restored, he gave a constitution by the constitutional charter of 1814. This guaranteed almost all the reforms set down in the Declaration of the Rights of Man. A legislature of two houses was set up modelled on the English constitution, consisting of a chamber of peers and a chamber of deputies. The local government and the legal system set up by Napoleon was maintained. The king's ministers were responsible to the legislature. His successor, Charles X, tried unconstitutional ways. Hence, he was supplanted in the Revolution of 1830 by Louis Philippe of the house of the Orleans who reigned till he was overthrown by the Revolution of 1848.[1]

The leaders of the French Revolution respected private property. Confiscation of the property of the church and of the emigres was political. As Aulard remarks about attempts to see Socialism in their actions, "Are we to demand that the social problems, which appeared 50 years later when industry had revolutionised the problems of capital and labour, should have been solved at the end of the 18th century?" The French Revolution chiefly benefited the middle classes. It was inspired by *laissez faire* principles. While it abolished the old guilds, it also made illegal combinations of employers and workers. This *laissez faire* sentiment continued for long. In 1803, J. B. Say (1767-1832) popularised Adam Smith's views in France in his *Traite d' Economic Politique*, and Bastiat in his *Economic Harmonies* (1850) : Napoleon I's Penal Code punished strikes. But, the workers learnt from the French Revolution the method of revolution as a weapon. Workers herded in towns owing to industrialisation, could hold discussions and form combinations disguised as friendly societies. Lacking modes of constitutional action, the workers became revolutionary. Particularly, the Paris workers became a tool of revolutions, as governments were made and unmade at Paris. During the second quarter of the nineteenth century the Industrial Revolution invaded France.

In 1840, appeared Proudhon's assertion that 'La *Propriete c'est le vol*' in his book *What is Property.* Proudhon (1809-1865) was not an extremist. Like Saint Simon and Fourier,[2] he respected private property, but he attacked its abuse. Saint Simon (1760-1825) advocated transformation of society according to ethical Christian principles. Fourier (1772-1837) wanted society to consist of productive groups. But it was Louis Blanc (1811-82) who inspired the unrest of 1880-48 by his work. His *Organisation of Labour* which appeared in 1809 urged the setting up of co-operative workshops controlled and run by the workers themselves to control all indus-

[1] The constitution of 1814 continued, though it was made more liberal.

[2] Their fantastic theories were being discussed in French *salons* for a long time. Bastiat defended the existing system.

tries with government help. He wanted that the state should guarantee the workers' "Right to work". Unlike Fourier and Saint Simon, Blanc preached to the masses and also preached Socialism in something like its modern form. The evils of the factory system increased the discontent of workers. Bad harvests and trade depression between 1846-48 led to unemployment in the luxury trades of Paris. It was natural that Louis Philippe should try to repress this new phenomenon of socialism. But this made the workers republican.

This led to the Revolution of 1848. Such was the influence of France on Europe that this inspired similar revolutionary moments in other parts of Europe. The Provisional Government of 1848 which was hastily set up was not strong enough to resist the Paris mob and recognised the right of labour to combine. National Workshops[1] (really agencies to provide work or doles in default of work) were set up to relieve unemployment. But these big ill-managed relief works failed. The elections brought to power a moderate party. Blanc (who had played an important part in the Revolution) fled to England. The "Workshops" were abolished and combinations were again made illegal.

A constituent Assembly framed a new constitution which set up the Second Republic. A president who held office for four years was to be elected by manhood suffrage. The president was given large powers. A single house elected by manhood suffrage was also set up. Louis Napoleon, nephew of the First Napoleon, used the opportunity to get elected as president. His election shows the peril of direct election of the executive head. The masses, incompetent to make a wise choice, chose one who dazzled them by his family prestige. This feeling of popular support also encouraged Napoleon to become a practical dictator. By the *coup d'etat* of 1951, he dissolved the assembly. A plebiscite gave him power to revise the constitution.

Napoleon advanced to empire by stages. He first extended his term as president by ten years by plebiscite. A second plebiscite made him in 1852 hereditary emperor, and thus the second empire was set up. This can be compared with the *coup* of Hitler in 1931. Napoleon had previously rebelled against Louis Philippe. This could be compared to Hitler's *Putsch* of 1923. A nominated senate was set up in addition to a legislative body which was elected by manhood suffrage. Napoleon claimed to base his authority on the principle of popular sovereignty and hence preserved the manhood suffrage set up by the "February Revolution" of 1818 : but this was only a cloak for his personal rule, because the elections were practically controlled by the government by disqualifying many voters, gerrymandering of constituencies, setting up official candidates and

[1] These had nothing to do with Blanc's "Workshops." It was usual even before to open shops during unemployment. These kept peace at Paris during this crisis.

pressure on voters through prefects and mayors. The Legislative Body could not amend the budget. Any law passed by it, if disliked by the executive, could be thrown out through the submissive senate. Under a form of democratic government, the will of the emperor was supreme. While all could vote, the government saw that its own candidates were elected. The press, universities and education were kept under control. The powers of the popular chamber were so restricted that the emperor had practically absolute power. The comparison to the Roman Empire is noteworthy. Even the emperor recognised popular sovereignty. His power was raised to majestic dignity on this basis.

Napoleon III tried to conciliate the agrarian and industrial classes by pushing forward construction of railways, rebuilding Paris and setting up the *Credit Foncier* (land mortgage banks) and *Credit Mobilier* (mortgage banks) to help industry. It was only after his fall in 1871 that France again restored her republic.

The French Revolution was a great victory of the democratic idea, though it was mainly a middle class revolution, and the complete enfranchisement of all the people was realised only in the nineteenth century. It set up the principle that the people themselves should control the government and this principle spread over all Europe. It was also a great triumph for the principle of liberty. Old abuses like inequality in law, religious disabilities, arbitrary imprisonment etc., were attacked. As Herder points out, it destroyed the landmarks of the Old World like the Reformation and brought on the stage of human affairs forces which have moulded the thoughts and actions of men ever since. Aulard remarks, "The French Revolution differed from other revolutions in being not merely national, for it aimed at benefiting all humanity."

France was important, as her written constitutions became the model for Europe in the following features—idea of a definite constitution, limiting the power of the head of the executive, securing equal rights for all and declaring popular will as the source of political power. Despotic monarchy was discredited by its inability to protect the country from the aggression of the French Revolutionary armies, and its internal weakness. Ideas emanating from the French Revolution were carried all over Europe. Grant and Temperley (*Europe in the Nineteenth and Twentieth Centuries*) show that these changed the face of Europe.

The "Rights of Man" drawn up by the French National Assembly in 1789 asserted that men are equal and free and served as a model to other countries. Though the Revolution was a middle class revolution, it ushered in the principle of democracy. Gooch in the *Cambridge Modern History* (Vol. 8) compares it to the Reformation.

The following are the important results of the French Revolution :—

(1) General political principles like popular sovereignty[1], equality of law, drawn mainly from French philosophy, spread throughout Europe. French revolutionary principles were spread wherever the French armies went and the kings who wished to keep their thrones had to yield in some matters. Serfdom gradually disappeared. Democratic spirit developed leading to the later ideas of universal suffrage.

(2) A comprehensive declaration of the "Natural and Inalienable Rights of the individual"[2] like personal freedom was asserted.

(3) Promulgation of a written constitution was considered the solemn record of the contract of the people with the government.

(4) Republicanism as a creed and as an example was put forward[3].

Another important development was the spirit of nationalism. The French Revolution preached the "Rights of Man". But the French cared nothing for the feeling of nationality, when they annexed the Netherlands and parts of Germany. The overthrow of Napoleon was really due to the national forces aroused by his aggression.

The Congress of Vienna, after the fall of Napoleon, organized a settlement, disregarding the principles of Nationalism and Liberalism.[4] Thus, no attempt was made to unify Italy and Germany. Holland and Belgium were united into one state. Norway was joined with Sweden. The Poles remained divided. Despotism was restored. Hence happened most of the unrest in Europe like the revolutionary movements of 1830 and 1848. By 1870, Italy became unified under a limited monarchy. Austria, which dominated and divided Germany, was excluded from Germany which became unified into an empire

[1] Though writers like Rousseau demanded the vote as the inherent right of every citizen, even in the French Revolution, this theory was not put into effect. Women had no rights, and it was only in the latter half of the nineteenth century that writers like Mill (*Subjugation of Women*) pleaded for their rights.

[2] Lord Acton (*Essays on Freedom*) defines Liberty as "the assurance that every man shall be protected in doing what he believes his duty against the influence of authority, majorities, custom and opinion." Bryce (*Modern Democracies*, Vol. I) defines Liberty as fourfold : (*i*) civil liberty, (*ii*) religious liberty, (*iii*) political liberty (participation in government), and (*iv*) individual liberty (exemption from state control in matters which do not so plainly affect the welfare of the whole community as to render control necessary. Myres remarks, "In place of the mediaeval emphasis on classes, institutions and orders, men were beginning to have an importance in themselves."

[3] By the twentieth century, more than three-quarters of Europe became republican. Even the surviving monarchies are only crowned republics.

[4] This was natural in the reaction after the French Revolution *e.g.*, Van Haller urged in his Patrimonial Theory obedience as the natural duty of the weak to the strong.

under Prussia, though the principle of democracy was checked by the powers of the emperor. Pure despotism still continued in Russia and Turkey.

By the middle of the nineteenth century, parliamentary democracy (based on the English model) was the established form of government in Europe. It is worthy of note that the bicameral system (a phrase perhaps due to Bentham), which was the product of a happy accident in England, was imitated and found theoretical defenders like Mill, Bagehot, Lecky, Acton and Sidgwick who held that a unicameral legislature was dangerous to liberty. Kent and Storey in U.S A. have expatiated on the advantages of the second chamber. History and experience proved its utility. Abbe Siyess' saying "If the Second Chamber agrees with the first, it is superfluous; if it disagrees, it is mischievous", is simple logic which disregards utility.

The First World War (1914-18) further stimulated the forces of democracy and nationalism. The *Entente* Powers who fought in this war proclaimed their aim as "making the world safe for democracy", just as the object of the powers in 1792 was to make the world safe for monarchy. The Treaty of Versailles which ended the war, with all its defects, stressed the principle of nationality. Poland was recreated. The Slav areas held by Austria-Hungary were formed into the new states of Czechoslovakia and Yugoslavia. The Hohenzollern dynasty which ruled Germany and the Hapsburg dynasty which ruled over Austria-Hungary disappeared, and both these became republics. The Russian Revolution of 1917 overthrew the Tsar of Russia and set up a Socialist republic. The Turkish Revolution of 1922 overthrew the Sultan and made Turkey a republic. In 1914, there were only three republics, but nineteen monarchies in Europe. In 1932, there were sixteen republics and only ten monarchies. The principles of universal adult suffrage, elaborate declaration of rights (guaranteeing also rights to minorities), direct legislation like the referendum and the initiative and proportional representation spread.

But soon it was discovered that human suffering was not removed. The very extension of parliamentary franchise had led to high hopes which were now disappointed[1].

Democracy had faced criticism already from writers of the previous centuries. Tocqueville, in his *Democracy in America* (1835), while convinced that democracy was inevitable, wondered how it could be reconciled with respect for property and reverence for religion. Still, he believed that America had solved this problem. Though the "tyranny of the majority" disheartened him, he asserted, "When the people are invested with supreme power, the perpetual sense of their own miseries impels the rulers of society to seek for perpetual ameliorations."

[1] Toynbee (*World after the Peace Conference*) shows that parliament was undermined from within by new political forces.

Maine in his *Popular Government* declared: "We may say, generally, that the general establishment of the masses in power is the blackest omen for all legislation founded on scientific opinion, which requires tension of mind to understand it and self-devotion to submit to it." Maine pointed out the danger of class legislation like taxation of the rich. Maine thought that, in foreign policy, democracy would show caprice, timidity, inconsistency or impulse. He pointed out that universal suffrage may lead to the rule of an ignorant populace and insecurity of government owing to mob disorder. Along with Carlyle, he condemned the stump orator as the worst product of democracy, and thought that the complex questions of politics could be only vaguely understood and dealt with haphazardly. While Mill regarded democracy as leading to a great and limitless era of progress, Maine regarded it with alarm and anxiety.

Maine observed that representation was an antidote to the infirmity of democracy; but he felt it was useless, as it was degenerating into instructed delegation. He idealised the American constitution as full of dykes to stem the tide of full democracy. Mill (*Representative Government*, Chap. III) argues that representative government is the ideally best government. But he does not think government by a majority just, unless minorities are represented. He recognised that democratic majorities are as capable of oppressiveness as any monarchy or oligarchy. Lecky (*Democracy and Liberty*) held that democracy is not favourable to individual liberty. Seeley pointed out that popular government is usually restless, busy and meddlesome, while many of the most absolute governments may not at all interfere in the lives of the subjects. He regarded liberty as the opposite of over-government. Hallam comments on the tyranny of the majority: "Numerous bodies are prone to excess, both from the reciprocal influences of their passions and the consciousness of irresponsibility, for which reasons a democracy, that is, the absolute government of the majority, is the most tyrannical of any." Acton declared: "The most certain test by which we judge whether a country is free is the amount of security enjoyed by minorities."

Later writers have also pointed out various defects of democracy. Lord points out (*Principles of Politics*) that direct democracy in the narrower sense, the sense which Maine adopts as the correct interpretation of the phrase "popular government" for purposes of criticism, is very far from being universal. Representative democracy avoids the objections launched against the former turbulence and anarchy of the mob. People, not intellectually or morally fit, do not perform tasks of government for which they are unfit. Some regard representative democracy as the best form of government as it protects the people from their own ignorance and incapacity [1] But, even this theory has certain assumptions which

[1] The representative is a 'natural aristocrat' and interprets the inarticulate wishes of the people according to his discretion. J. S. Mill, Lecky, Maine, Sidgwick and Bluntschli think that even the vote should be given only to those who can understand the questions at issue. Mill (*Representative Government*) argued that only property owners had a stake in the country.

may not be realised : (1) The people will always choose the best representatives. (2) Best representatives will offer themselves for election. (3) The available supply of persons of political capacity should be unlimited. (4) Local interests would not defeat common interests. Some, hence, regard representative democracy as only a transition and favour the control of the representatives by shorter term, recall, referendum etc. Among other factors that tend to weaken the representative principle are rapid development in transport, diffusion of education and efficient organizations for the supply of information. Bryce concludes, however, (*Modern Democracies*) that representative assemblies must remain the vital centre of the frame of government in any country not small enough to permit of the constant action of direct popular legislation.[1] The people as a whole cannot attend to details, or exercise watchful supervision over the executive. The utility which Mill and Bagehot saw in these assemblies remains, if perhaps reduced.

It is also urged that it is difficult to obtain legislators who will judge intelligently the enormous variety of interests, economic, social and political, that come before them for consideration.

Some writers argue that it was a strange irony that the broadcasting of democratic principles should have taken place after First World War, just the time when representative democracy was falling into discredit amongst the peoples of Europe. Bryce (*Modern Democracies*) shows the decline of the feeling of complacent optimism about the growth of the cheap press. The press exercises immense influence on the electorate, but is often irresponsible, creates artificial opinion by manipulation (distortion or suppression) of news, and is often used by Moneyed Interests to influence the home and foreign policy of the country. Newspaper Trusts manipulate public opinion and create mass hysteria. They are often in the grip of the octopus of millionaires. While Bryce has noted lack of interest on the part of the voters and gullibility of the masses to seductive appeals, Graham Wallas shows that names, images and symbols which have acquired emotional value are glibly exploited by politicians. "Our elections tend to be veritable floods of mass-suggestions."

It is pointed out that democracy is less efficient from the executive standpoint than other forms of government. Wilson remarks that democratic forces "are critical, analytical, questioning and quizzing forces, not architectural, not powers that devise and build." It is said that officials are prone to be timid so as not to displease the people. This incompetence is said to be greatest in foreign policy and it is asserted that democracy cannot govern an empire.

It was pointed out that democracy has led to the factious strife

[1] He notes that authority is being transferred to the executive or the people from the representative assembly.

of parties.[1] The "will of the people" has become simply that of a party leader. Party bosses appeal to the people on the basis of irrational emotions and party strife involves use of rhetoric, unfair tactics and *suppressio veri*. This also leads to dishonesty and corruption. Burke philosophically justified the party as a body of men united for promoting by their joint endeavour the national interests upon some particular principles on which they are agreed. But M. Michaelis in his *Political Parties* shows how the party system, as developed in the Continent under universal suffrage, has led to oligarchic rule, fanaticism and servile obedience. Willoughby admits that the party system has been used for personal and dishonest ends. He remarks : "The strictures of the party organization lead to the crushing out of individuality and to the suppression of liberty of opinion, a revolt against party dictation being punished by total political ostracism." MacIver (*Modern State*) remarks that the will of the people is set up as a mystical god in whose name the political priests of a new oligarchy struggle and rule. Further, the politician attracts simple and inexperienced people by catchwords and slogans and tries to control public opinion. The party press exercises influence on public opinion by selection and repression of views and suggestions. Ridicule of opponents takes the place of argument. The party machine selects all candidates and lays down the policy. Party nominations are guided by service rendered to the party or ambition of the controllers of the machine. Multiplicity of parties, leading to weak coalition governments, resulted in inefficient and weak governments, irresponsible opposition and unscrupulous corruption. Another criticism against democracy came from the working classes. Their economic condition made their vote ineffective and led to the dominance of a plutocracy. Absence of economic equality stood in the way of political equality. Harmony between individual liberty and welfare of the community was not realised. Hence, workers in several countries regarded parliament as an institution run by oligarchies of capital and wealth. Failure of democracy to co-ordinate sectional interests led to conflicts between capital and labour. Even before the First World War, many workers were dreaming of "direct action" having lost faith in constitutional methods.[2]

Besides the discrediting of parliamentary governments by weak coalition governments and party scandals, conditions after the war were also unstable. Defeated peoples as in Germany were discon-

[1] See, for example, the trenchant criticism in Balloc and Chesterton, *The Party System*. Bolingbroke in the eighteenth and Brougham in the nineteenth century attacked party.

[2] J.A Hobson (*Democracy*, 1934) criticises the absence of social democracy in nineteenth century democracy and holds that the choice is between real social democracy and dictatorship which safeguards capitalism. Bernard Shaw (*Apple Cart*) criticises democracy on the ground that it hinders swift and unhampered public execution of enterprises necessary to the community and charges it with reflecting the interests of the self-seeking classes.

tented. Economic problems due to the huge war-debts and the load of reparations[1] the defeated powers had to pay caused financial difficulties. The position was utilised by ambitious leaders like Mussolini in Italy and Hitler in Germany who became popular heroes. The first example was in Italy where Mussolini set up his Fascist dictatorship In Germany, Hitler set up his Nazi dictatorship. Austria also abandoned parliamentary democracy. Hungary and Poland came under dictators. Spain passed under the dictatorship of General Franco in 1939. In 1937, Dr. Salazar became the dictator of Portugal. Kemal Pasha became the practical dictator of Turkey. In 1937, President Vargas of Brazil suspended the constitution and set up a dictatorship, suppressing all political parties. These personal dictatorships depended on the personality of the dictator who offered his programme as an alternative to weak or corrupt democracies. Another kind of dictatorship. vested in the army leaders, operated in Japan and several states in South America. In 1936, a subservient Congress in Peru voted dictatorial powers to the president who was strongly Fascist. In 1939, Bolivia abolished the parliament and allowed its president to rule by decree. Some dictatorships inclined to the left. General Cardenas, strongly anti-Fascist, set up a popular dictatorship in Mexico by a *coup d' etat*. Russia, under its Communist dictatorship, forms a special case.

Conditions which favoured the rise of Dictators were as follows. Democracy failed as it had no deep roots in the soil, being a foreign importation. Military defeat, economic crisis and breakdown of old traditions bred despair. There appears a man with a definite programme and resolute will which disregards all considerations of morality.[2] As Catlin has pointed out, Fascism has a definite theory which is old obedience to a leader based on faith. He is the saviour who comes when men, weary of responsibility, evade it and turn to him with irrational worship. Toynbee thus explains in his *Study of History* how this disease appears. Around every centre of higher culture, there is a zone of lower culture which triumphs when the other is weak. Dictatorship appealed to all groups on different grounds – capitalists, workers, racialists, those who love order and

[1] Winston Churchill (*The Second World War*) has the same interpretation of persons and events which is found in Wheeler-Bennett's *Munich* and Namier's *Diplomatic Prelude* He thinks that, after the war, the Allies threw away their victory While the peace was too severe in details like too heavy reparations, it was too lenient in not bringing home to the Germans that they had been really defeated. He thinks that the second war was needless.

[2] H. G. Wells who calls the age before the war of 1914 as the Age of Democracy, calls the post-war period as the Age of Democracy in Revision Fascism and Communism turned against parliamentary democracy. To put it in psychological language, all these forms of Totalitarianism are marked by Anthropaemetrism (man is treated as a machine). In both, the individual is subordinated to the state Freedom of debate is controlled and one single party dominates. But Fascism, unlike Communism, recognises economic inequalities, and capitalism, though industry is controlled and profits may be restricted It subordinates women, while Communism allows complete equality. While Communism allows equality to all races, Fascism is based on alleged race purity.

hate anarchy, militarists etc. Militarists are attracted by promises of glorious wars. Capitalists welcome the profitable war production, and share in economic control of occupied areas. Workers are dazzled by full employment and massive displays.

The common assumptions of these dictatorships are : (1) The omnipotence of the state. Like all modern doctrines, this was asserted by Greek philosophers. Plato and Aristotle held that full human life is realised only in the state. Prof. Rocco claims that Mussolini has his roots in Machiavelli. Hegel in Germany also held that the individual exists for the state. Mussolini cried in 1927 "Nothing outside or against the state." (2) The natural inequality of man (contrast democracy). In Plato's ideal state, the Guardians governed the state. Intermediate between them and the masses was the class of warriors who protected the community. Aristotle believed in two types of men—(1) the natural rulers and (2) the natural ruled like the slaves. The German writer, Nietzsche, elaborated the idea of the "superman". But, the dictators recognised the superior class only in excellence of the body and not of the mind. Hence, they extolled war as a school of virile virtues. (3) Democracy is effete and antiquated and its days were numbered. Mussolini said in 1933 : "The chamber of deputies never pleased me." What the dictators called Pluto democracy was to be superseded by leadership. (4) Expediency was elevated over morality Hence, falsehoods were allowed in propaganda. Hitler in his book *Mein Kampf* advocated skilful scientific exposition to mislead the intelligentsia and emotional propaganda amongst the masses using symbolism and pageantry. The government under the dictators was "Totalitarian", that is, all the individuals were completely integrated into ' a community profoundly conscious of its disciplined strength and racial superiority, consecrated to the realisation of its own special destiny " In the political sphere, no individual had any rights against the state. In the economic sphere, all economic organization was controlled by the state. In the sphere of society and culture, there was complete domination by the state.[1]

A dictator may make the Government strong, because it is controlled by a single man with obedient instruments. He may often promote national interests and glory. But all these advantages were purchased at a heavy price. There was complete sacrifice of individual liberty. No dictatorship would allow freedom of discussion. Dictators were not guided by moral considerations and tended to keep up national spirit by aggression. Workers were in a

[1] Cobban (*Dictatorship – Its History and Theory*, 1939) defines it as "the government of one man who has not obtained his position by inheritance, but either by force or by consent, and normally by a combination of both He possesses absolute sovereignty, his tenure is not limited to any given term of office and he is not responsible to any other authority." Cobban would ascribe his rise to a psycho-pathological cause despair, because man, weary of effort, deliberately evaded the responsibilities of the government and succumbed to the primitive urge for a personal leader. Kohn (*Revolution and Dictatorships*) condemns dictatorship as against the basic concepts of Western civilisation.

worse position. The claim of the dictators to have cured economic *malaise* was wrong, as the dictators had seldom any knowledge of economic matters and jettisoned the advice of economic experts, if it was unpalatable. The irresponsible will of the dictator was equated with that of the state, and he used terrorism, bloodshed and bluster to uphold his power. Dictatorship could never be permanent. It must be regarded only as a temporary expedient to set things going when the political machine broke down. The dictators used not only naked power based on physical force but also economic power based on control of economic resources and power over opinion by censorship and propaganda. The intoxication of power makes dictators forget the limits of power, as in the cases of Napoleon and Hitler. History has proved that people, though long-suffering will be roused to fight and die for their liberty.[1]

Bryce defines democracy as "a government in which the will of the majority of qualified citizens rules, taking the qualified citizens to constitute the great bulk of the inhabitants, so that the physical force of the citizens coincides, broadly speaking, with their voting power." After analysing the experience of a century of popular rule, Bryce concluded that democracy has achieved far more satisfactory results than any other system of government. Even in the nineteenth century, John Stuart Mill argued that democracy was the safest form of government. Hattersley in his *Short History of Democracy* holds that it is the only national form of government. But democracy involves different conceptions. Political democracy may exist without economic democracy and the rich may rule the state. On the other hand, economic democracy may exist without political democracy as in a savage tribe. Thus, the conception of equality, in its social and legal sense, means abolition of class privileges, slavery etc., and, in its economic sense, absence of class distinctions. The conception of liberty, as Lord Lothian points out in his *Liberalism in the Modern World*, is the right and the responsibility of every individual to think for himself and not accept his thinking from any human authority in church or state. But, it does not mean simply this. It must include state action to prevent abuses by the rich, for example improvement of the condition of workmen.[2]

[1] MacIver (*Leviathan and the People*, 1940, a book written before Second World War) stresses the two aspects in which democracy differs from dictatorship: (1) distinction between the state and the community, (2) free operation of conflicting opinions. Marriott (*Dictatorship and Democracy*, 1937) tries to show that dictatorship was the result of attempts to copy the delicate mechanism of the English parliamentary government without the long disciplinary process necessary for it. Carr (*International Treaties since the Peace Treaties*), in a new edition bringing the matter down to the beginning in 1940, shows the worthlessness of Hitler's assurances revealed in the rape of Czechoslovakia in March, 1939, an event which finally forced Britain to resist further aggression. As Medlicott points out (*British Foreign Policy since Versailles*, 1919-1939), British foreign policy had been increasingly ineffective after 1930 owing to the complexity of the problem and the attitude of the dictators.

[2] Bryce notes the ominous features in the fact that, in the desire to reconstruct the economic foundations of society, constitutional

Regarding the "tyranny of the majority" which disheartened Tocqueville in 1830, it must be remembered that democracy is the rule of numbers and this means the rule of the majority. It is the only practicable device. But it goes without saying that this majority must be considerate to the minority. Jefferson, who believed in the rule of the majority, insisted that it should be reasonable. John Quincey Adams says that the majority may have the *power* to do as they please, but not the *right*. The problem is acute only when there are minorities based on racial, religious or cultural differences. The theory of nationalism (one nation, one state) tolerates no autonomy for these minorities, while the minorities insist on their freedom. The only solution is a reasonable spirit of compromise accompanied with adequate guarantees in the constitution to these minorities. Democracy works most successfully where the population is homogeneous and class distinctions are not rigid, people have strong common sense and solid judgment, so as to make a wise choice of leaders, and there is a general instinct to obey the law. It is possible that certain issues like religion, race or economic division may cause revolutions even in a democratic state. But, as MacIver points out, a truly democratic state is vastly more secure than an oligarchy against the threat of revolution.

All writers like Bagehot, Sir Sidney Low, Lowell and W.J. Brown affirm the necessity of Party.[2] Party organization becomes dangerous only when it conceals the real wishes of the majority and uses its powers for selfish or improper purposes. But, even if party leaders indulge in *suppressio veri* and *suggestio falsi*, the intelligent electors who are supplied with the views of all parties can draw their own conclusions. Real difficulties come only, if the parties are "irreconcilable," based on region or race (as in Austria-Hungary), religion (as in the militant clerical party in old France) or economic interests (as the Communists in some countries). Party system functions only, if the parties are national and advocate principles aimed at the welfare of the whole country. The class struggles at Athens and Rome and the Guelf and Ghilbelline contests in mediaeval Italian republics illustrate this. A group which tries to wreck the government and seize power by force (and not by popular vote) is not a party, but a faction which hence is put down by the state as dangerous.

As regards the party system,[1] it is impossible to run a democratic government without parties, and the evils can be remedied by education. Lack of interest on the part of the voters can be removed only by the freedom of discussion incidental to democracy. MacIver remarks (*Modern State*) that Party is the only means by which the

[*Contd. from p. 122*]
methods are sometimes discarded in favour of Direct Action. But he does not deal with the need for greater economic equality and makes no constructive suggestions He fails to note that extension of democracy in industry is only an affirmation of the democratic principle.

[1] See the rational defence of Party by Burke in his *Thoughts on the Present Discontent.*

[2] The growth of parties and party organization is fully discussed in Ostrogorski – *Democracy and Organization of Political Parties.*

ultimate political sovereign can definitely control government. Without it the state is either a system of arbitrary domination or the battlefield of contending factions. "Party system substitutes the theory that Principle is a better form of government than Force, persuasion more desirable than compulsion." Governmental changes take place without disturbance, as public opinion changes. P. O. Ray (*Introduction to Political Parties and Practical Politics*) says : "Wherever political parties are non-existent, one finds either a passive indifference to all public concerns, born of ignorance or incapacity, or else, the presence of a tyrannical and despotic form of government which suppresses common manifestations of opinion." The Will of the People is too inchoate, too inert. It has to be focussed and established through the elaborate mechanism of party organization. Bryce (*Modern Democracies*) declares : "No free, large country has been without parties. No one has shown how representative government could be worked without them" and concludes that they are inevitable[1]. In Politics, there are more than two sides to a question. Our question should be, not whether parties are good or evil, but how we can make them serve the best interests of democratic government

Bryce remarks in the same book that the party system enables men who think alike on public questions to work together to bring their policies into actual operation. He points out that even if intellectual convictions had much to do with the creation of a party, emotion has more to do with its vitality and combative power. So, emotion need not be decried. It is also to be noted that, when a political party gets power, its tone always softens with responsibility and drastic changes of policy are rare, for each party has a Right, as well as a Left wing. As against the charge that the system encourages the selfish ambitions of party leaders, it must be remembered that an organized party has to take care that its character does not suffer in the eyes of the public. Party criticism ensures on the government caution to consider all aspects of matters, avoid mistakes and satisfy reasonable objections. The criticism that the party system destroys the independence of the partymen is true, but this is inevitable to party organization and should not be minded as long as the party stands for patriotic and public interests. Even a party press which speaks in the same voice is dependent on popularity and cannot afford to estrange its readers. MacIver notes, "Newspapers may exploit the prejudices of the people, but cannot run counter to them."

Bryce (*Modern Democracies*) notes that Public Opinion is confused, incoherent, amorphous, varying from day to day. There may

[1] Differences of views are characteristic to human nature and are based on character, age and status. The young and the poor tend to be less conservative MacIver notes that a man may be conservative in religion and liberal in politics like Gladstone, or conservative in the economic sphere but radical in others like Spencer. Men fell into types of Reactionaries, Conservatives, Liberals and Radicals, each type fading into one another.

be different currents of sentiment, strong or weak, according to the strength of adherents or feelings. Governments have to take note of this impalpable factor and shape their policy. A wise Public Opinion is formed where people are intelligent and interested in public affairs. Newspapers are not a safe guide to this opinion. It is significant that American papers forecast the defeat of President Truman in 1948, badly misjudging public opinion. Public meetings are also no safe index, for they can be organized by any energetic group. By-elections may indicate only local circumstances. Still, there is a continuous Public Opinion at work and this precedes any considered vote at elections.

Graham Wallas, though he points out defects in democracy in his *Human Nature in Politics*, *The Great Society* and *Our Social Heritage*, does not condemn it. He wants to rectify the defects by increasing the place of reason in politics. "Our ideal should be to make the casting of the vote as much based on impersonal weighing of scientific evidence as the decision of the jury," by expansion of education. The only certain antidote to demagogy is education of the masses.[1]

Bryce notes also that education alone is not enough. Rustics, unable to read but with mother-wit and solid judgment, are better qualified for the vote than those who are undiscriminating slaves of the printed word. It is thinking that matters, not reading. The Greeks, who worked a more complicated democracy, learnt their politics, listening to speeches and conversation. Popular government demands a high degree of enlightenment on the part of the citizens. Wilson remarks "It is the heritage of races purged alike of hasty barbaric passions and of patient servility to rulers and schooled in temperate counsel... . It is poison to the infant, but tonic to men. Monarchies must be made, but democracies must grow."

Mallock (*Limits of Pure Democracy*) argues that inequality is really the order of Nature. All human advance is due to the super-capable, and so an intellectual oligarchy is the best and is indeed contemplated by Nature. He denies the validity of Abraham Lincoln's definition of democracy as "government of the people, by the people and for the people" on the score that it is only the few who govern in modern democracies. But, Mallock fails to note that this oligarchy need not be benevolent as he imagines. Unscrupulous financiers may set up a class oligarchy. Further, Mallock forgets that natural talent may often be thwarted by inequality of opportunity. MacIver (*Modern State*) points out that democracy imposes on even the most powerful interests the necessity of appealing for the support of the public. The only way to political power is the persuasion of the public—not wealth or social prestige.

Miss Follett objects to the definition of democracy as "majority rule". "The will of the people need not be necessarily represented

[1] Wallas points out (*Great Society*) that there should be a definite plan of civic education to improve the intelligence of the masses. Otherwise, we have only the incompetent many for the corrupt few.

by the majority...Majority rule is a clumsy makeshift to get at the genuine collective thought, and, often, by installing the era of bosses, becomes minority rule. Corruption and barter of votes results. All talk of majority and minority is futile. We do not want the rule of either, but a method of political procedure by which majority and minority ideas may be so closely interwoven that we are truly ruled by the will of the whole, and then only there is Democracy. The confusion of democratic rule and mass-rule, the identification of the people with the crowd or the herd, has led many people to denounce democracy.....The so-called evils of democracy are all the evils of our lack of democracy."

Bryce notes (*Modern Democracies*) that the old question—which is the best form of government?—is now almost obsolete, for democracy (which was regarded by the educated classes as a menace to order and prosperity some time ago) is now accepted as the normal and natural form of government. Whatever cynical critics may say, there remains a large measure of truth in the faith in the people, as it inspired the poets and philosophers of democracy a century ago. He notes that the average man's instincts are generally sound, and unrestricted exchange of thought works for good. It is undoubtedly true that in a proper democracy all citizens feel a personal responsibility for proper administration and improvement of popular welfare. Delisle Burns (*Democracy* I 30), in his masterly analysis of the merits and defects of democracy, concludes that the incompetence of voters and representatives is not a serious defect, contrasted with the defects of other governments. He says that democracy is superior to other governments, for it brings out the abilities of the Common Man. Bassett (*Essentials of Parliamentary Democracy*, 1934) also vindicates it.

The charge of incompetence against democracy is not generally true. Incompetence can be found in monarchies and oligarchies also. Democracy is not inconsistent with wise leadership. The leaders are generally persons who have been trained in a long career of public life. Further, Bryce thinks that, even in foreign affairs, democracy has been as capable as other governments and more amenable to moral principles. The success of British democracy disproves the assumption that democracy cannot govern an empire. Bryce notes that democracy has shown greater zeal in alleviating the condition of the poor and terminated many injustices. Though the fond hopes of the early champions of democracy have been shattered, still its achievements are none the less solid. It is less liable to revolution than other forms of government.[1]

[1]Dr. Benes (*Democracy To-day and Tomorrow*, 1940) refutes the theory that World War I did nothing to promote democracy. He exonerates democratic leaders from charges of blunders and errors of judgment.

Ivor Brown (*The Meaning of Democracy*) agrees with Joad (*Principles of Parliamentary Democracy*) that the governed must not merely acquiesce in what is done for them, but decide for themselves freely about it.

Alderton Pink (*Defence of Freedom*, 1935) restates the real meaning of freedom in modern democracy and stresses the need of discipline to resist Totalitarian rivals.

CHAPTER V

STATE INTERFERENCE

The Industrial Revolution in England did not mean the introduction of capitalism. Capitalist middlemen had developed even before in crafts. But, now, capitalism became important. The Industrial Revolution spread to France in the second quarter of the nineteenth century and to Germany in the third quarter of the same century. National feelings led to the development of industries in Europe under protection. Desire to seek markets for their goods led to a new struggle for colonies. By the end of the nineteenth century, Germany, though still a great agricultural country, became the second industrial country in Europe. There followed a commercial revolution. Huge business concerns with world-wide interests developed, and capital was invested all over the world. Urbanisation was promoted as people massed in towns.

Population increased. Improved communications swept away famines. The Congress of Vienna inaugurated a period of peace from long and devastating wars. Improved medical knowledge removed the peril of pestilences. Germany had a population of less than eleven millions in the fourteenth century and tweenty-five millions in 1816. By 1870, she had nearly thirty-nine millions France had twenty-seven millions in 1801 and forty millions in 1913. Britain had twelve millions in 1811 and thirty-one millions in 1870.

These economic revolutions which increased the power and wealth of the capitalists at first led to great misery to the labouring population. This concentrated attention on the question of state interference to redress economic and social ills.

Burgess[1] groups the ends of the State as three : (1) Primary—to maintain stability and order, (2) Secondary, to develop the nation, (3) Ultimate - to perfect humanity at large. While the extent of state activity would vary in accordance with the condition of the country, generally state activity has increased. In the first stage of barbarism, the sole aim, as Bagehot points out (*Physics and Politics*), was safeguarding internal order and external security and raising taxes for this. Then came administration of justice and fixing the rights of the family like descent of property. Later, the state looked after social monopolies like coinage and regulation of trade and industry like fixing weights and measures. Lastly, the state took over functions like education, public health and poor relief, which were originally left to voluntary agencies like the church. Determining the political rights of citizens, state management of

[1] *Political Science and Comparative Constitutional Law.*

enterprises like posts and telegraphs and irrigation, regulation of banking and industry, safe-guarding conditions of workers, and social security schemes followed. A recognition of these increased functions and the regulation of economic conditions as part of the modern conception of the state has led also to the devolution of governmental functions on administrative bodies and agencies under government authority.[1]

As Willoughby points out, at first, the individual had, generally, no guarantee against the state. By degrees, there arose a struggle against arbitrary control. Laski (*Rise of Liberalism*) urges that the *bourgeoise* laid its foundation of power in the sixteenth century in its struggles against the nobility and the church. In the seventeenth century, England took the lead, and then followed the victory of constitutional government in politics, toleration in religion, utilitarianism in morals, and state in action in economic matters. In the eighteenth century the lead passed to France. But, the middle classes neglected to provide for economic democracy and wealth meant power over man. The later eighteenth century was dominated by the "Classical" economists who were against state intervention in economic matters. They argued about an imaginary "Economic Man" who looked after his interests well and wisely. This theory of Individualism, which was powerful in the early nineteenth century also, was a reaction from the over-government of the earlier period. Adam Smith,[2] Ricardo and Malthus supported *Laissez faire* on the ground that individual self-interest promoted general interest. Jevons and the Austrian School of Economists gave a new direction to the theory by denying this basis but arguing that free competition of supply and demand led to general welfare.

Starting from Kant, the view prevailed that the state simply existed to guard the society. Humboldt assigned a very narrow limit to the province of the state. But, he himself, as minister in Prussia, had to extend the power of the state. Individualists[3] like Spencer, Janet and Humboldt would limit the functions of the state to keeping peace between individuals and safeguarding the country against enemies.[4]

From 1848-80, the general tendency was towards Individualism. According to it, in home politics, there was to be restriction of state activity to the bare minimum. In foreign policy, there should be free trade and friendship between nations. Spencer is its great

[1] *See* Wade's edition of *Dicey's Law of the Constitution.*

[2] The Fourth Book of Adam Smith's *Wealth of Nations* is a strong attack on Mercantilism. Say popularised his views in the Continent.

[3] Stephen has shown in his criticism of the individualistic doctrines in Mill's *On Liberty* that the purely political duties of the state have become progressively less important than its other functions.

[4] See Spencer—*Man* vs. *the State.*

Other great Individualists were Hume, Bentham, Cobden, Bright Jefferson, Madison, and Paine.

prophet.[1] English scholars like Spencer and German scholars like Schaffle have elaborately compared the state with an organism with reference to the number of parts used to discharge various functions, growth in functions and variety of needs, and a self-conscious will.[2] Spencer uses this comparison to justify Individualism. But this can very well be used to justify State Socialism also.[3] In fact, this is only an analogy, as the state, having no assimilative or reproductive organs, cannot be literally regarded as an organism. Joad regards the conception of the state being a personality as a figment of imagination. Jethro Brown (*Austinian Theory of Law*) says that a natural person is a physical reality and a natural organism, but the state is only a legal conception. Willoughby would recognise (*Theory of the State*) the juristic character of the state as a person, since it has a will of its own. But it is strictly a legal person, and not a physical or ethical person. Since the state is only one of human associations, men may also have interests outside the state (*e.g.*, church, trade union, etc.).

Hobson (*Free Thought in the Social Sciences*) shows that metaphors are misleading in social sciences. There is no evident purpose in government, but only a compromise of conflicting forces.

MacIver (*Modern State*) writes that the issue between Individualism and Collectivism formed the greatest political and economic controversy of the nineteenth century. One of the best presentations of the former is Mill's *Liberty* which pleads both against the unimaginative bureaucratic authority of the state and the capricious tyranny of the mob. The Individualist position that government is a necessary evil and that its power must be limited to the protection of citizens from violence and fraud is antiquated. Mill himself in his *Principles of Political Economy* admits the need of state intervention in certain economic spheres where liberty of competition injured the workers. He allows large powers to the state of controlling distribution of wealth for the sake of social utility in times of need. Both Sismondi and Mill who accepted the basic conclusions of the Classicists became inclined to limit *Laissez faire* by state intervention. Mill marks the climax and decline of the Classical School. Classical writers explained away the conflicts of individual interests in various ways. Mill regarded this as due to the imperfect realisation of individualism, while Spencer regarded it a sign of progress by weeding out the incapable to make room for the fittest. The Historical School which originated in Germany pointed out that the Classical belief in the universality of their doctrines is not true, and personal interest is far from being the sole motive even in economic

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[1] Barker—*Political Thought in England from Spencer.*

[2] Jellinek asserts that the personality of the state is the capacity for unified, continuous, reasoning volition. Unity of political purpose gives the attribute of personality to the state.

[3] Just as cells have no rights of their own, the individual has no rights except what the state gives.

matters. Carlyle and Ruskin vehimently pleaded for regulation of the life of the community by the state.

Bentham (*Fragment on Government*) assumed that a government which permitted the selfish securing of happiness by the individual who would use his reason to find out the way for this would produce the greatest happiness of the greatest number. The error of this assumption is brought out by MacDougall (*Social Psychology*) who proves that the innate instincts of man which motivate his action are irrational and denies that only self-interest dominates human actions. Mill himself admits that classes of individuals like children and savages must be taken care of. However, human nature is very complex. Hobhouse shows in his *Mind in Evolution* that reason is not something opposed to instincts, as it is also inborn in man. Man can be both selfish and altruistic. He can reason sensibly and can also feel irrationally. The Economic Man conceived by Adam Smith, Ricardo, Malthus and Bastable is perfectly well-informed, perfectly intelligent and perfectly selfish, for he always buys cheap and sells dear. Such a being never exists, and, very often, individuals cannot be the best judges of their own good. The miseries which followed industrialisation in England form the best condemnation of unrestricted free competition.

Spencer[1] regards state action as an unwise interference with the working out of the principle of the survival of the fittest. But the fittest need not be the best. Further, man, unlike lower organisms, can modify the environment in accordance with his moral instincts. Darwin himself admitted the importance of sociability of man and animals in the struggle for existence. But his followers neglected this aspect. The family, the club and other associations show this dependence of social beings on one another. The very instinct of charity is a natural impulse. Ward thus criticises the *Laissez faire* theory : "The whole upward struggle of rational man, whether physical, social or moral, has been with this tyranny of Nature—the law of competition ..The whole difference between civilization and other forms of natural progress is that it is a product of Art." Ritchie enquires, "If we were to remove any artificial restriction that hampers the struggle for existence, are we not going back to Rousseau's 'State of Nature' the primitive, uncivilized condition of mankind ?" Huxley himself says, "The creature that survives a free fight only demonstrates his superior fitness for coping with free fighters—not any other kind of superiority." Willoughby remarks that Spencer and others emphasise the physiological features of the competitive biologic law while almost ignoring the psychic. The haphazard growth of capitalist economy helped by the policy of *Laissez faire* led to the simultaneous development of conflicting economic interests in the state which influenced politics, as each group wanted to secure its interests, *e.g.*, the financial

[1] Barker (*Political Thought in England from Spencer*) shows that his contribution to the theory of politics is not of great value.

scandals in France in 1936 connected with Stavinsky who had enjoyed the friendship of ministers and high officials.

Seeley (*Introduction to Political Science*—Lectures 5 and 6) conceived a Negative State as the best. This conception of a police state has been attacked by writers like Garner who desire that the state should be a Positive State which should promote general welfare. Lord (*Principles of Politics*) criticises Sir John Seeley's conception of Liberty as being negative, identified with non-interference and hence treated in a meagre way. "State's action is not to be conceived as the operation of any external and possibly hostile force, not the organized expression of the common will of the citizens. Law may represent the state's control as coercive, and History, as arbitrary. But the only satisfactory justification of the state's authority is that it is the expression of an individual's own real will and provides the only medium in which he can grow to his full stature." Miss Follett (*New State*) argues against the "fallacy" of "Man *vs.* the State".

The Idealists had an exalted view of the state as an embodiment of the best in every man. So the conception of Man *vs.* the State is wrong. The state is justified, because it expresses the best in us. It is not man's enemy, but identical with our moral life. Hegel in Germany taught that the individual existed for the state. Treitschke carried his theory of the will of the state further and viewed the state as the Power—the "highest thing in the eternal society of men". Hegel and Fichte upheld the power of the state. Hegel urged that the state was an end in itself for which the lives of men and women were merely the means. The effect of this theory is seen in the political ideal of Bismarck—the idea of an Absolute State. Fichte held that the personality of the state has a will and a power which is supreme. Every state was its own arbiter as to the exercise of this power. Bluntschli, who disliked the narrow interpretation of the functions of the state, held that the proper end of the state was "perfecting of the national life and its completion." T. H. Green (*Principles of Political Obligation*)—affirms the unity of the individual and the state and urges that the full development of the individual could be only through his membership of the state. Bradley (*Ethical Studies*) and Bosanquet (*Philosophical Theory of the State*), his two chief disciples, go even beyond. Bosanquet, the nearest English follower of Hegel, views the real will of the individual is the same as the collective general will represented by the state. Bosanquet held that there could be no conflict between the state and the individual.

Sir Henry James, the Idealist writer, in his *Principles of Citizenship*, while duly stressing the importance of the individual, holds that there should be no limit to state action, provided the end is Good Life. A well-organized state is the greatest guarantee of the growth of individual personality. The state should provide facilities for the individual to live the best life possible by removing all hindrances from his path, and the function of the state should be limited to this. Hence Green (1836-82) justifies compulsory edu-

cation, but not legislation which interferes with the family, religion or human self-respect. Joad and MacIver criticise the Idealists as identifying the state with society and thus making the state omnipotent. Plamenatz (*Consent, Freedom and Political Obligation*) is also a strong critic. But all this criticism should be applied only to German Idealists like Hegel, and not to British Idealists like Green and Bosanquet who limit the sphere of state action. Hobhouse (*Metaphysical Theory of the State*) contests the conclusions of the Idealists. He thinks that the reaction from Benthomite Individualism has gone too far and tends to make the state sacrosanct. Idealism tends not to realise an ideal but to idealise what exists. Rational wills of individuals may clash and may not harmonise with that of the state.

Joad points out that the enormous extension of state activity during World War I made individuals question it. Macdougall's *Social Psychology* emphasised the importance of the individual, though he recognised the group as an important fact. He thinks that the latter's importance has been exaggerated by Le Bon. Maitland, following Gierke, emphasised the importance of groups within the state. Figgis (*Churches in the Modern State*) urged that the church, like the family, is not the creature of the state and is even anterior. Laski held that in any conflict between him and the state or between his group and the state, the conscience of the individual must decide his allegiance. Laski denies that law is a command of the state, but only a rule of convenience. It is not because of force that men obey the state. He insists that the state, like every other group, should be judged like them and prove itself by what it does. The theory of State Sovereignty will disappear like that of Divine Right and men should give their allegiance to that group which is possessed of superior moral purpose, whether it is the church, trade union, organization of finance or industry, cultural association etc. Laski criticises the idolising of the state. He points to the growth of bureaucracy everywhere and the powerlessness of the state to encounter the opposition of large sections of the community as indicating that the sovereignty of the state has come to mean only the sovereignty of the government. He urges that the will of the state is limited by the organized will of communities inside and ethical standards externally.

The call against the state is supported by Cole (*Social Theory* and *Guild Socialism Restated*). While Figgis asserts the rights of religious groups and Laski and Russell the rights of individuals, the Guild Socialists press those of functional groups. "When the loyalties of the individual are thus distributed, each single group will claim limited control only and the individual will have a better chance of preserving his freedom." World War I increased the feeling against the view of the state as an absolute power, responsible to none and with no obligations to its neighbours.[1] The theory

[1] See Prof. Lindsy—*Proceedings of the Aristotelian Society*, June, 1924. John Dickinson discusses the question in *Pol. Sc. Quarterly*, Dec., 1927

[*P.T.O.*

of State Sovereignty was regarded as exalting the state into a tyranny free from all moral obligations, *e.g.*, the Germans claimed that violation of Belgian neutrality was an act justified by state necessity.

Bentham's *Fragment of Government*, though it purported to be a criticism of some parts of the introductory sections of Blackstone's *Commentaries on the Laws of England*, is really a treatise on sovereignty. While admitting the principle of the absolute sovereignty of the state, he concedes that it may be limited in effect by conventions based on the principle of utility. MacIver adversely criticises the theory of omnipotence of the state. Distinctive associations arose to promote objects which the state was itself not capable of securing. These are not created by the state and they are internally independent. The state steps in only to regulate their legal character in common interest. The doctrine of Absolute Sovereignty, if actually carried out, would be fatal to the harmony of social life. The state not only upholds the law. It is itself bound by the law. It is the *community* which is the source of power of all these associations including the state and it assigns the state the peculiar function of giving a form of unity to the whole system of social relationships. As Green points out, though the state has power to enforce its command by authority over life and liberty, it is not this background of force which endows its commands with sovereign authority, but the fact that it claims to speak for common interests.

The rigid Austinian view of sovereignty cannot be applied to undeveloped communities. It errs in attribution of external absolutism to the state and its emphasis on the external sovereignty of the state is against modern conceptions. It fails to locate the real centre of power in the state. Ward correctly says that the term "Sovereignty" is "twisted and tortured by a wide variety of interpretations." He adds, "It is a notion that has been carried over out of the setting in which its historical function lay, with its implications of irresponsible absoluteness and inherent supremacy of law, to plague and befog contemporary thought with ideas of national exclusiveness, inherent rights, moral absolutism and legal omnipotence." Merriam would confine it to mean "a concentration of recognised authority for the common good and of power for common action". Such power can only be based on consent and be limited in practice.

Miss Follett in the introduction to her book, *New State*, summarises the reasons for a reaction against the State in the early twentieth century. (1) Economic and industrial progress has led to assertion of labour for political power. (2) The new doctrine of the rights of groups like churches and trade unions supported philosophic theories of Pluralism. These associations are felt to be more real and intimate than the distant state. The state is seen as only one and

Contd from p. 132]

and March, 1928. MacIlwain considers it in *Ibid*, March, 1933. See also article "Sovereignty at the Crossroads", *Ibid.*, Dec., 1930. See also *Modern Review*, Nov. and Dec., 1937.

not the most important of these groups. (3) The old doctrine of Natural Rights encouraging resistance to the authority of the state. Convergence of authority in its hands is held dangerous to the individual. (4) Increasing alignment before the First World War of interests traversing state frontiers. (5) Tendency to regard the state as personifying the tool of masses hyptonised by party leaders and vague slogans. In the words of Joad, majority rule was seen as "the crushing intolerance of the mob-mind."

Modern opponents of State interference like Bertrand Russell stress also individual rights. Russell (*Roads to Freedom*) says, "The state is *merely* a means, and a means which needs to be very carefully and sparingly used, if it is not to do more harm than good. ...A good community does not spring from the glory of the state, but from the unfettered development of individuals." Haynes (*Enemies of Liberty*) pleads powerfully for liberty which was sadly menaced during the war and is threatened by factions like Communists, groups like Capitalists and individuals like Prohibitionists.

The problem of adjusting individual freedom to social order is a complicated one. Bertrand Russell in *The Authority and the Individual* (1949) notes the persent trend towards larger and more centralised accumulation of power, and suggests that the danger could be minimised by wider and more detailed devolution of power to small units. Bertrand de Jouvenol in his *Power* (1948) argues that the encroachment of the state on the time, resources and minds of individuals was in the name of some kind of reform. He says that the theory that absolute power is not wrong, if exercised in the name of the people, is a ninetcenth century fallacy. People can never exercise power, but only a group—a dominant political group. Thus, power becomes identified with law. There must be a check on power —a law above it. Bertrand Russell (*Power*, 1948) defines Power as the "ability to cause others to behave as we wish or to prevent them from behaving as we do not wish." He classifies four types of it. (1) Direct physical power as exercised by the military and the police. (2) Pressure through propaganda. (3) Regimentation through education, and (4) Party discipline or submission to a leader. Dictators used all these four forms. The growth of the dictatorship was helped by existing discontent, a private army under the leader, his skill in organization, his powers of speech and command of propaganda, his indifference to treachery and bloodshed, an organized body of henchmen and secret service. All dictators, like the old religious fanatics, disapproved of dissent. Power, by itself, is not dangerous. The concept of Power is as essential to politics as that of energy is to physics. But when it is used for the sake of power and not for public good, it becomes a menace. While Power is essential to the state, Soltau remarks (*Introduction to Politics*) that "the less the state uses actual coercing power, the better it will normally be for all concerned. Its work is best carried on by prestige relying on the habitual self-control of the citizens." Bertrand Russell (*Principles of Reconstruction* and *Prospects of Industrial Civilisation*) declared that

the state externally encouraged the false religion of patriotism and international anarchy and internally sacrificed the individual. Willoughby admits that the object of democracy should be to avoid governmental oppression as well as individual license and reconcile political and civil liberty.

Writers no longer believe that law is the arbitrary decision of the will of the state, but it is called for by the social facts which constitute the basis of law. Sovereignty of the state depends on the social service it is able to render. But, much of the criticism of the theory is due to confusion between legal and political sovereignty. Regard must be had to the *nature* of the power of the state rather than to the actual *range* of it.[1] As Willoughby says, in every political organization, there must be one source from which all power springs. In the modern state, this power is distributed. He says, "By whomsoever or whatsoever body the will of the state is expressed and law enacted, there we have sovereignty exercised." The state exercises through its government certain powers. The residue belongs to it only in a *potential* aspect. Laski himself admitted in the preface to the fourth edition of his *Grammar of Politics* (1937) that the state is bound to claim an indivisible and irresponsible sovereignty in society.

Miss Follett (*New State*) shows the weakness of Pluralism. We certainly do not want to go back to the mediaeval guilds with their jealousies, selfishness, and impossibility of co-operating to preserve order or carry on foreign relations. The state is the natural outcome of the groups—the collective mind embodying the moral will and purpose of all. The state is the bulwark against the danger that the general interest might be defeated by the domination of particular functional interests. Cole over-emphasises unity in vocational bodies. He groups university professors and school peons in the Educational Guild, and ignores the fundamental diversities in interests and outlook within the guilds. There is no provision to solve deadlocks. The state, as the guardian of the interests of the entire community, must have power to co-ordinate the various sections of the community, while giving freedom to the groups. But, it is only the state which makes possible the life of individuals and groups by offering external protection and internal regulation. State sovereignty is justified by the superior value of the benefit offered by the state over that offered by other groups. Miss Follett remarks that "man can have no rights independent of or against society .. Balancing society and man is artificial.....These distorted ideas of liberty and equality have been mixed up with our monstrous fallacy of Man *vs.* the State. The citizen and the state are one and their interests are identical. We do not exalt the state and subordinate the individual or *vice versa.* The state is the people."

Bryce (*Essays in History and Jurisprudence*) regards obedience as an instinct implanted in human nature. Motives for that may be

[1] See Merriam and Barnes—*History of Political Thought in Recent Times.*

just indolence, deference and esteem, disposition to do what others do, fear, or reason. How far the State should punish sedition, unless it expresses itself in force, is a disputed question. Opinions must be countered by opinions, not by the force of the state. Discussion has ranged over the right of resistance to the state. (See Laski *Dangers of Obedience.*) But no community could hope to progress, if rebellion became a settled habit. The right to disobedience can be exercised only at an extremity. It cannot be a *legal right* but only a *moral duty*. Laski (*Liberty in the Modern State*) holds that all restrictions on rights like freedom of expression on the ground of sedition or blasphemy are wrong, for the hearsays of to-day may be the orthodoxies of tomorrow. Fisher (*Commonweal*) condemns the overriding of individuals by the state. But he adds that, where constitutional methods exist, challenging a government to the point of civil war can be justified only by the most exceptional circumstances. The evils of civil war are very great, while its gains are uncertain. It rouses hatred, suspicion and cruelty. "If once the principle of respecting majorities as expressed in the ballot-box is abandoned, then the way is open for the violence of any minority." Fisher observes (*Commonweal*), "To challenge a government to the point of civil war is.....so grave an act that it can only be justified by most exceptional circumstances. More particularly is this the case when the government provides the ordinary openings of protest through parliament and the press. What about foreign governments? Fisher argues that two tests have to be applied before the right of ultimate rebellion is exercised. (1) Has the government a high moral ideal? Conquest is not necessarily an evil, if there is a clear balance of good over the evil in the service which the government renders to the governed. Fisher fails to note that there cannot be any agreement on this between the government and the subjects. (2) Whether the revolt might be futile and result only in increasing narrowness, suspicion and violence? Fisher's argument might well sustain passivity and submission to oppression. Fisher also thinks that the principle of Passive Resistance may be carried to a point which would make all civilized government impossible, for no law is considered right by all people." "Individual rights are always conditioned by public advantages." The example of the Passive Resistance movement in India belies this fear of Fisher, provided the movement is controlled by a leader of the type of Gandhi.

History shows, however, that nearly all violent revolutions have failed after a period of success, as they were mainly the work of organized minorities and not supported by general opinion. Rockow (*Contemporary Political Thought in England*) remarks, "The advocate of violent revolutions must feel certain (1) that peaceful and gradual methods will not accomplish his purpose, (2) that the bulk of the population is, at least, in tacit sympathy with his views, and (3) that his constructive plan is superior to the system he intends to overthrow." Still, as MacIver urges (*Modern State*), the truth remains that "states in which there is no general will co-extensive with the

community or in which the general will is merely acquiescent or subservient, are always unsound. Such are class-controlled states, empires and even those democracies.....in which the government is constituted by a privileged portion of the total community."

Rousseau's slogan that man's freedom is his birthright is false, as no right can be enjoyed without restriction, rights involve responsibilities and the conception of rights always change from time to time, according to circumstances.[1] The changed views since the time of Adam Smith is seen from the fact that, while the freedom and personal enterprise of the individual is recognised, the idea of liberty no longer means abolition of existing restrictions and non-interference by the state, but effective creation of opportunities for all classes of men. Hobhouse (*Principles of Sociology*) suggests even the abolition of private property in natural resources and inherited wealth and extension of collective management in industry. Even Haynes, who, in his *Enemies of Liberty*, pleads powerfully for individual liberty, has to allow compulsion in education on the ground that in the modern industrial age an educated population is essential for successful commercial rivalry with other nations.

Socialist writers[2] describe social misery *e.g.*, G. D. H. Cole in *The World of Labour*. Rowntree in his *Poverty* shows that, besides physical and mental suffering, malnutrition destroys even the efficiency of the workers for labour. The figures given in Chiozza Money's *Riches and Poverty* indicate that incomes are so unevenly distributed that about one-seventh of the people take half the national income. Writers like Oppenheimer (*The State*) even regard the present state as based on the domination of one class over others. Stuart Chase (*Tragedy of Waste*) and Catchings and Foster (*Profits*) condemn the economic structure which is also attacked by the Webbs in *Decay of Capitalist Civilization*. The Socialists would definitely subordinate the individual to the state, and substitute altruism as the basis of society instead of self-interest. But Socialists have broken into minor groups with differing ideas. Ramsay Macdonald in his *Socialism* uses the biological reasoning of Darwin to show that the limbs of the social organism are ill-adjusted now, because the good of each limb and not of the whole organism is aimed at. He regards Capitalism as an interlude between Feudalism and Socialism. Sidney and Beatrice Webb in their *Towards Social Democracy* regard Socialism as only the culmination of tendencies in social movement operating since the nineteenth century. Collectivism is, to them, just the application of democracy in the economic sphere, just as it had been applied in the political sphere. This view is shared by thinkers like Shaw and Wells. The Christian Socialists justify collectivism on the principles of Christianity. Henry George (*Pro-*

[1] For duties of a citizen in a free country, the following may be consulted – Taft's *Four Aspects of Civic Duty* and Bryce's *Hindrances to Good Citizenship*.

[2] Mayer—*Political Thought in France from Sieyes to Sorel* (1943)—surveys political thought from the French Revolution to the fall of the Third Republic.

gress and Poverty, 1879), while holding that land is the common property of mankind, would tolerate private property in it subject to taxing the unearned increment on it (single tax on land) and using the proceeds for social welfare. The Guild Socialists seek to avoid the evils of a bureaucratic tyranny implicit in Collectivism by organizing labour in guilds, but decentralising the management, with the factory as the unit of organization. The consumers will be similarly organized and the two interests will be co-ordinated by communes representing both. The chief advocates of this view are Penty, Hobson and Cole. (See Cole's *Guild Socialism Re-stated*[1], 1920, and Hobson's *National Guilds and the State*, 1919.) English Socialists like the Fabians limit private property to a certain maximum. (See Mr. and Mrs. Webb—*A Constitution for a Socialist Commonwealth.*) While social welfare is recognised as the end of the state, countries like U.S.A. still hold that, if the incentive of free competition is removed, improvement will be checked. Individual genius to which progress owes so much will be suppressed by the grinding tyranny of a big state bureaucracy. They point out that actual experience of state management shows inefficiency, lack of elasticity and delay.

Communism shares some common ideas with Socialism, but tended to differ. Though foreshadowed in Plato's *Republic* and More's *Utopia*, Robert Owen first began practical experiments in it by founding small Communist groups which, however, failed. Karl Marx[2] laid down its theory by arguing that society is moving to class war which would end in the dictatorship of the proletariat.

[1] His Guild State is virtually a federation of groups co-ordinated by a commune.

[2] Karl Marx, a German Jew, was born in 1818. In 1847, he wrote with Engels the *Manifesto of the Communist Party* in which the battle cry was raised 'Proletarians of the world unite.' In 1849, he came to London where he lived till he died in 1883. He was writing here his work *Das Kapital* It appeared in 1867. This book tried to prove from history that Socialism was bound to prevail. He forecast the end of the existing system by a general upheaval His appeal was only to the proletariat, though he claimed to be scientific. His system was based on the Ricardian theory of value which is no longer accepted. The theory of the materialist conception of history which he elaborates has only one element of value—realisation of the importance of economic factors in history. His mistake was in making them the only important factor. His anticipation that all means of production would be gradually concentrated in the hands of a few capitalists and this would be the signal for a revolution has been falsified. Concentration has not prevailed in agriculture where in most countries the small holders are dominant. Even in industry, small-scale business has not disappeared. The proletarians, instead of being progressively impoverished, began to increase in comfort. The influence of Marx lies not in his arguments, but in his slogan of class war. But, inconsistently, in some passages, Marx regarded this class war as peaceful and carried on through constitutional means. Marx preached Socialism even before the French Revolution of 1848. But, when he preached it, it was only a doctrine for intellectual minorities. In 1864, Marx formed the First International with branches in different countries to carry on propaganda. But it was feeble and torn by internal quarrels. It declined after the Franco-German Wars and was dissolved in 1876.

The Communists deny the efficacy of modern parliamentary democracy which is condemned as a screen for capitalist dictatorship, and emphasise Revolution. After an interim period of proletarian dictatorship after the Revolution, they feel that there will be no need for a state. (See William Paul's *Communism and Society*.) Marx laid down that the value of the produce of labour is more than the value which he receives from the capitalist, and the worker has no legal or economic method of redress. He tries to show that the very same causes which led to the growth of capitalism were bringing about its ruin. Large-scale production leads to increase of the proletariat. Concentration of industries in the hands of the few will lead to their expropriation by the workers. All attempt at improving conditions of workers is useless and even harmful, as it postpones the day of reckoning. A Communist dictatorship cannot be different from other kinds of dictatorships and there is no guarantee that the interests of the dictators will always be the same as those of the community or that they will be free from ordinary human weaknesses. Ruth Fischer's *Stalin and German Communism* argues that the new Totalitarian state was originated by Lenin and formed the model for Hitler and that it is so evil that no incidental good it may have achieved can justify it. MacIver (*Modern State*) notes that Marx simplified the varigated structure of society with the black and white of capitalists and proletarians, a view which ignores the multifarious divisions of society. The crude admiration felt by Marx for the Middle Ages coloured the views of his followers, *e.g.*, Hyndman (*Historical Basis of Socialism in England*).

Anarchism is a curious mixture of Classical and Socialist views. Private property is the parent of all kinds of privileges, and government is the bulwark of privilege. The individual must be free of all restrictions. If the government is overthrown in a revolution, the society of individuals will enjoy a free life, the individual and general interests according owing to free play of reason. Syndicalism had no belief in parliamentary democracy and wanted to achieve Socialism by direct action and political strikes.

Tocqueville and Acton held liberty and equality to be contradictory. But Tawney (*Equality*) has urged that the liberty which they have in mind is a particular interpretation of liberty, and equality is not really contradictory to liberty. Miss Follett (*New State*) argues that much of our present class hatred comes from a distorted view of equality. Actually, there is no mechanical equality. "The only real equality I can ever have is to fill my place in the group at the same time that every other man is filling his." Bryce (*Modern Democracies*, Vol. I) shows that civil equality (possession by all citizens of the same status in the sphere of private law) and political equality (share of all citizens in the government of the community) have been largely won. Social equality (absence of legal distinction between different classes) has also been realised to much extent. Natural equality (feeling that all men are born equal) is not realisable, because of differences in gifts bestowed by Nature.

In the words of Sir William Harcourt, "We are all Socialists now." Still, with regard to state interference difference of opinion persists. The state may give too much help (Maternalism) or embark on too much regulation (Paternalism). Private property in land is justified now not on the old individualist argument but only on the basis of social utility, *e.g.*, the owner must be actual cultivator or occupier not a mere absentee or leaser. Private property is thus interpreted as a social trust. Each citizen should have equal opportunities which may be hindered by the monopolisation of them by a few. Modern conception of taxation has also changed. Adam Smith and Ricardo thought that the incidence of taxation should rest only on income and not on the capital. Herbert Spencer urged in his *Man vs. the State* that taxes should be only a *quid pro quo* for certain services done by the State which should be restricted to the minimum. Capitalists oppose use of taxation as a means of effecting social changes and discriminating burdens which fall more heavily on the richer classes. The tendency is, however, a qualified approach to the Socialist view that the State is the residual owner of all income which exceeds the requirements of the normal standard of individual comfort. Thus, income-taxes exempt a certain amount of income and are levied on a graduated scale above this limit. It is recognised nowadays that State power must be used to remove glaring economic inequalities. Modern democratic governments have extended state activities in the direction of social security and welfare.[1]

The First and Second World Wars saw individual interests subordinated to public purposes. Railways were taken over in most

[1] Laski (*Reflections on the Revolution of Our Time*, 1943) held that the world is in its greatest crisis since the Reformation. He holds that the modern counter-revolutionary (*e.g.*, the Fascist) tries to adapt capitalist society to conditions of modern technology, rejecting, however the liberal origins of capitalism The ruling classes, according to him, opposed the extension of the democratic idea into economic and social fields in the period between the First and Second World Wars. He idealised, however, the Russian Revolution which he held as standing in the same relation to the 20th century as the French Revolution did to the 19th century. Naturally, hence, he refused to regard Communism and Fascism as twin aspects of the same principle. Communism, according to him, is a "genuine search for democratic freedom."

Francis Williams (*Democracy's Battle*, 1941) surveys the triple challenge to democracy by Fascism in Italy, National Socialism in Germany and Communism in Russia. The first nullifies democratic freedom by establishing the absolute authority of the state over groups and individuals and supports itself by raking up nationalist passion. The second threatens democracy by its belief in a "Master-race" who had a conquering mission. The third uses democratic phraseology to set up a bureaucratic and authoritarian state. The author, however, follows Laski's *Where Do We Go from Here?* in advocating a Militant Democracy in social reconstruction but without violence. In another book *War by Revolution* he argues that Democratic Socialism begun in England is the best solution for all countries Laski's views may be contrasted with those of T. R. Frynel (*The Malady and the Vision*) who regards Stalin, the Russian dictator, as a fellow-gangster and a natural ally of Hitler and Mussolini. A. D. Lindsay (*I Believe in Democracy* 1940—a collection of his speeches in the B. B. C.) holds that democracy must solve the problem of unemployment and provide social security.

of the countries. Germany stimulated scientific management in agriculture and industry and coined the word "Rationalisation" during the First World War. Combination of industrial units was deliberately promoted for purposes of economy and military needs. Exports and imports were controlled by licenses so as to conserve national resources. In Germany, France and Italy, regulations restricting hours of work for labour were relaxed. Housing accommodation was controlled.

Hence, attention was bestowed on deliberate planning by the state. "From each according to his ability and to each according to his needs" is regarded as a Communist and not a Socialist slogan. But, state planning is an important step towards it. Though Cole thinks that planning by a capital state is paradoxical, writers like Pigou accept the general structure of capitalism, altering it only with a view to lessen economic inequalities and further social welfare. H. G. Wells (*The Shape of Things to Come*) believes in planning and solving human ills by the use of machinery. Barbara Weston (*Plan or No Plan*, 1934) argues that a planned society is superior to the present. Planning has its dangers. It may lead to regimentation. A dominant bureaucracy consisting of numerous officials, may stifle society. Baker (*Science and the Planned State*, 1945) emphasises the danger to freedom of science by overplanning. Lippmann (*Good Soc ety*[1], 1937) warns of the dangers of overplanning. He (*New Society*) holds that large-scale planning is incompatible with democracy. Prof. Hayek (*Road to Serfdom*, 1944) asserts that planning leads to Totalitarianism and servitude of the people.

But, planning which sets up production targets and tries to supervise their carrying out in detail is recognised as advantageous by most economists of the present day. Difficulties in the way are imperfect knowledge of the wants of the consumer, mistakes of judgment, acts of nature which may hinder the plan and incalculable vagaries of human behaviour. Even in Soviet planning, critics have pointed out over-production of industrial plants, lack of co-ordination, inaccurate estimates, dictatorial methods, growth of a bureaucracy wedded to red tape and prone to corruption and uneven achievement. Still, Russia has converted herself from an agricultural to a highly industrialised state by planning. Planning is necessary as it obviates the waste of time, money and human activity present now. Sir William Beveridge's famous report on Social Security (1942 December) which is summarised in his *The Pillars of Security* (1943) indicates the way in which public opinion even in England has progressed. The same author's *Full Employment in a Free Society* (1944) studies the problem comprehensively and marks a greater departure from orthodox Capitalist policy than even the Social Security Plan adopted in Britain. According to this study, the state would see that the total expenditure of the community, both public and private, should be sufficient to create employment for the entire labour force of the land.

[1] An enthusiastic appreciation of it is in Henry Wallace's *Democracy Reborn* (1944).

For proper planning, the English method of blundering into solutions is not suitable. Planning should be accompanied by encouraging individual enterprise to avoid the evil of regimentation, decentralisation to prevent over-centralization, and attending to distribution in addition to production[1].

Beni Prasad (*Democratic Process*) agrees with Leonard Woolfe that democracy is not mere political machinery, but a principle of social life, and advocates economic advisory bodies and planning commissions. Alison Phillips sums up : "The test of the true legitimacy of government must be, not its conformity to an abstract principle, but its practical efficiency. If it fails in this, it cannot endure. All government must rest, in the last resort, on the consent of the governed or of the greater or stronger part of them." Most thinkers agree that democracy must be helped by a corpse of experts who can measure social phenomena and ascertain social data. This is essential for sound planning.

[1] Russian planning has found admirers. Dr. Maung Ba Han of Burma (*The Planned State*) is influenced by its success. On the other hand, British planning has been praised as the first great attempt to combine large-scale economic and social planning with a full measure of individual rights and liberty. It is a noteworthy sign of the decline of *Laissez faire* that, as Carr has pointed out (*The Soviet Impact on the Western World*) that many of the Soviet practices like five-year plans, government control of trade and direction of labour have been accepted by other countries through circumstances.

CHAPTER VI

NATIONALISM AND INTERNATIONALISM

THE term "Nationality" is used to mean two things.—(1) as an abstract noun to express those qualities which make a number of individuals feel that they belong to the same nation ; (2) as a common noun to mean a group of such individuals, even though they do not form a state by themselves. Nationality is best defined as the result of the feeling of identity which animates a number of persons occupying a particular territory. This feeling of identity itself is the result of the presence of a number of different bonds which make them feel one with themselves and separate from others. This feeling leads to the desire of the people to be united in one state, whose government would express their common ideals and would promote their common interests. Zimmern remarks in his *Nationality and Government* that "Nationality is an instinctive attachment and recalls an atmosphere of precious memories." Nationalism is a spiritual sentiment. When a nationality becomes united in the one state, we have the Nation.

Several elements which unite people into a nationality have been distinguished. But, not one of these is essential. Residence in a common area tends to promote a uniformity of tradition and culture. Most nationalities have a common territory. But this is not essential, as the Jews, though dispersed for long, still retained their common feeling. Even with regard to this, Marriott in his *Mechanism of the Modern State* thinks that this national feeling of the Jews was due to "Zionism" that is, "collective affection for the common home of the race."

Community of race helps to develop nationalism owing to similarity of physical characteristics handed down from generation to generation. Here again, this is not essential, because most nationalities belong to mixed races. The United States, though racially diverse, had developed a national American outlook. The Turks and the Magyars, racially the same, separated owing to differing faiths. Though the Greeks were racially akin, they never formed a nation.

Community of language promotes unity, because it promotes community of thought, literature and culture. But even this is not essential. The Swiss nation speaks three languages.

Community of tradition and culture develops in a population, which is separated from other groups and may often be the result of a common language. But even this is not essential. U.S.A. and Canada have almost the same culture ; but they are distinct.

A common religion was formerly a powerful force of union amongst the people ; but, in the modern world, the growth of religious toleration has made this unimportant. The Germans who belong to different religions developed into one nation in the nineteenth century.

A population living for a long period under a single government tends to become a nationality in course of time. This is what happened in the United States, to which people of different races emigrated, and these weaker elements were assimilated by the dominant U. S. element. Where the government is intolerant of racial minorities, this sentiment is not operative, for example, Austria-Hungary.

Nationality arises also from external causes like foreign aggression or conquest. Thus Ireland developed a strong national feeling owing to the English conquest. The state need not be a nation. The nation is the state regarded from the unity of its people. Belloc defines it as "a community of human beings conscious in a determining majority of its unity and possessed of an individual mark which it recognises and in which it glorifies. The individual members are willing to make sacrifices, varying in degree from that of life to that of mere convenience in order to perpetuate the national idea and to preserve the nation from alien rule or from decline in power." The term "nationality" is used to mean the spiritual feeling of unity animating the people who occupy a definite territory, even though they do not form a state by themselves. The Irish people, before they became independent, have been regarded by some writers as the "oldest conscious nationality in Europe" owing to their insular position, a common name and common institutions and common tradition of resistance to the foreign English ruler. The term "race," unlike the term "nation," has no political significance.

Nationality has been said to have a double aspect of altruism and egoism. The people of the nation tend to sacrifice themselves in the interests of the nation.[1] On the other hand, exaggerated patriotism to glorify itself leads a nation to impose its peculiar national ideal on others which leads to a natural reaction in the other countries to save their own national ideals against its attacks. This is called "Chauvinism". Thus, Nationalism, at its best, is noble ; at its worst, it becomes a danger. Further, it is pointed out that in its extreme form "one Nationality, one State" is impossible. Nationalities are often intermixed and the only way to remove the alien element in a state would be to destroy it. Further, the carrying out of this principle would break up even big states into independent fragments which would not be viable.

As a principle practical politics, Nationalism exercised its influence only in the nineteenth and twentieth centuries before this, the boundries of the states varied according to the diplomatic needs of

[1] Once it is realised, the spirit of nationality tends to be dormant, unless it is roused by some external peril.

the states and dynastic considerations of the rulers *e.g.*, partition of Poland. The Congress of Vienna (1815) represents the climax of this policy. Most of the wars in later Europe were due to its disregard of nationality. After this, the new principle of nationalism rapidly developed[1]. This feeling led to unification of Germany and Italy and disruption in Turkey and Austria.

The peace settlements after the First World War saw the triumph of the feeling of nationalism. While the diplomatists of Vienna in 1815 were blamed for ignoring the principle of nationality, those of 1919 have been condemned for exaggerating it. The word "self-determination" was coined during the First World War. But it is fair to note that the axiom "one nationality, one state" was advocated by Mill in his *Representative Government* though his definition of nationality is inadequate and might be equally true of any group like a trade union. His advocacy of a mono-national state was opposed even then by Gumplowicz and Acton who favoured a polynational state. Acton (*History of Freedom and other essays*, Chap. 9) even pointed out the dangers of nationalism and regards nationalism as the opponent of progress and a retrograde step in history. Bernard Joseph (*Nationality*) held that the principle "One nationality, one nation" was dangerous and believed that several nationalities could live together in one state. Rabindranath Tagore (*Nationalism*) condemned it as "organized self-interest of a whole people."

A notable investigation by a study group of members of the Royal Institute of International Affairs, published under the heading *Nationalism*, concludes that the danger of nationalism lies, not in its existence as an emotional force, but in the characteristic exaggerations to which it is liable. It argues that the nation-state will exist, but its baser features must be eliminated.

Self-determination, which served in the nineteenth century to unite small states, was used during the First World War to disorganize existing units. Lippmann observes that Wilson forgot Abraham Lincoln when he identified himself with self-determination. He adds, "The principle can be used to promote the dismemberment of every organized state . ...By sanctioning secession, it invites majorities and minorities to be intransigent and irreconcilable." Alison Phillips rightly points out that "self-determination" is not a right, but a capacity.

But the conference after the First World War found it impossible to apply the principle of self-determination without arousing as many grievances as were cured.[2] It had to content itself with insist-

[1] Morley asserts (*History and Politics*) that nationalism "from instinct became idea, from idea, abstract principle, then, fervid prepossession, ending where it is to-day, in dogma, whether accepted or evaded." The cult of nationalism is put forth most clearly in Mazzini's *Duties of Man*.

[2] Cobban (*National Self-determination*, 1945) critically analyses the application of this principle in the Peace of 1919 and the later developments. He shows that self-determination cannot be an abstract right. A multi-national state, whose national sovereignty is limited and national minorities are granted safeguards, forms the best solver of conflicts. Prof. Carr (*Nationalism and After*, 1945) agrees that the principle of self-determination was carried too far.

ing on the equality of all citizens in the state and guaranteeing linguistic minorities use of their language in commerce, religion, courts and schools. Minorities were placed under the protection of the League of Nations. But no special privileges like separate representation in legislatures or services were given to those minorities, distinguishing them from the other citizens.

Nationalism led to imperialism. Besides military and sentimental reasons for desiring an empire, there were economic notions like desire to find markets for surplus goods and surplus capital and outlet for surplus people. Explorers opened up lands (*e.g.*, Africa) and flags of powers followed. Missionary enterprise also opened the way. The murder of two German missionaries in 1897 led to Germany getting Kiao-Chau from China. Capitalists advanced money and the government of their country interfered to save their money as in Egypt. National imperialism appeared in most European lands in the nineteenth century. In 1871, Germany possessed not one inch of territory outside Europe. By 1883-84, she got the third place among European powers holding Africa, and set up her hold in the Pacific also. Italy and Belgium became colonial powers. U.S.A., by conquest from Spain, got Puerto Rico, Hawaii and the Philippines. Old colonial powers like England, France, Portugal and Holland further increased their acquisitions[1]. The territorial expansion of these nations led to intense political and commercial rivalries. International jealousies led to growth of armaments. As Marriott points out (*European Commonwealth*), imperialism led to the revival of protection, reviving the idea of "Plantations" which could be exploited. This development was helped by advance in transport and discovery of new areas like the interior of Africa. Ramsay Muir (*Expansion of Europe*) suggests the following as causes for imperialism[2] : (1) Spirit of national pride seeking to express itself in the establishment of its dominion over less highly organised peoples. Thus nationalism leads to imperialism (2) Desire for commercial profits *e.g.*, in exploiting tropical products. (3) Zeal for missionary propaganda. (4) Need for expansion for surplus population. Scientific advance like inventions of modern engineering, deadly precision of Western arms and eradication of disease through medical science helped to open up undeveloped areas. Development of in-

[1] Demand for raw materials and markets led to scramble for territory amongst European powers who began to exploit large parts of the world like Africa. Imperialism expressed itself in annexations, protectorates or mere trade concessions. William Culberton (*International Economic Policies*, 1925) shows that, as in the days of the old Mercantilism, the power of the state is allied with industrial commercial and financial interests. National and imperial self-sufficiency is sought as a method of assuring national security and national power. He feared that this nationalistic competitive system of New Mercantilism would destroy civilization. Since he wrote, it has been partly responsible for two World Wars.

[2] Moon (*Imperialism in World Politics*) regards Imperialism as the survival of a Mid-Victorian policy in a very Un-Victorian Age. Lord Cromer justified it in his *Ancient and Modern Imperialism*, and the best condemnation is in J.A Hobson's *Imperialism*.

dustrial organization like use of "Big Finance" to be applied for vast enterprises and the use of new commodities like rubber and oil hastened the growth of imperialism.

Spheres of influence were set up by some states as their future colonies even before they were ready to occupy them. This was recognised by International Law. In certain areas, a positive control followed in the establishment of Protectorates whose foreign policy was controlled, but autonomy was allowed internally. One agency used in some places was the old method of the Chartered Company. Though nowadays it is not given monopoly of trade, it is allowed to exploit the natural resources of the area and is kept under close control by the government. In some areas, the imperial power directly administers the area, usually sending out a governor helped by officials.

The nineteenth century held that there was a natural harmony of interest amongst men and countries. This belief was suited to expanding Capitalism and Imperialism. It also believed that what was economically correct was also morally right. This belief was comfortable to Britain which held economic supremacy then. As the nineteenth century progressed, these axioms were proved false, though their final disappearance was retarded by the theory of evolution which held the doctrine of the survival of the fittest as a moral law Increasing state activity led to the final downfall of these conceptions in the internal policy of states, but, as Professor Carr points out (*Twenty Years' Crisis, 1919-39*), they survived in the international sphere. The Anglo-Iranian Oil Company (controlled by the British Government from 1914) along with American and Dutch interests, held concessions in Iraq. America has interests in Arabia and South America.

The growth of nations led, gradually, also to the development of the idea of regulating relations between nations. Thus developed International Law. Vittoria (1480-1541), a Spaniard, laid its foundations by writing of a community of nations. Gentili, an Italian teacher, developed his ideas in his *De Jure Belli* (1598). Refugees from various nations during the Dutch War of Independence brought in new ideas. Suarez, a Spanish Jesuit, held that moral law must regulate dealings between states. But the most important writer on International Law was Grotius whose *De Jure Belli et Pacis* appeared in 1625. Writers on International Law like Grotius and Puffendorf[1] saw that most of the matters concerning international relations were not covered by pre-existing custom or that existing usages were discrepant and hence turned to the Law of Nature as being based on reason and as something which all mankind was bound to observe. They built up a system of positive rules based on that. Mcwat (*European State System*) points out that the Grotian fabric of International Law rested on three postulates : (1) a determinate Law of Nature and (2) binding of this on states in their relations to each other and (3) the states, like individuals, were equal.

[1] His *Law of Nature and Nations* appeared in 1672.

The development of International Law was made urgent by the brutality of war in the seventeenth century. This brutality is illustrated in the Thirty Years' War—the most terrible war Europe had known till the twentieth century. Germany was reduced to a desert, and about two-thirds of the people perished. Civilization received a great blow. Cities which had been the homes of fine arts were ruined. Lines of commerce built up by the Hanseatic League were broken. The moral decline is seen in the growth of superstitions and the licentious atmosphere of the camp. It took a century for Germany to recover its tone. In those days there w re no ambulances or hospitals in Europe, and the wounded and the dead were left uncared for. In the past, there was no international regulation of war, except in India. Warfare amongst the Greeks was cruel. Early Rome had traces of international regulation in the *Jus Feciale*. When Rome became an empire, there was no question of international relations, as there was only one state. The rise of nation-states in the sixteenth century led to the growth of the idea of regulation of international relations in war and peace.

Grotius emphasised that (1) each state is equally sovereign and independent. (2) Its jurisdiction is absolute over its entire area. These principles form the bed-rock of the Law of Peace. "There is nothing," remarks Fisher (*Commonweal*), "upon which nations are so sensitive as the attempt on the part of alien powers to influence their domestic policy." The jurisdiction of the state extends to territorial waters within a three-mile limit and all colonies.

But Grotius also urged regulation of relations between states. There developed the law of diplomacy according to which diplomatic officials represent the states in other countries and carry on negotiations. More important is the law of war. Grotius urged that war should follow after a formal declaration of war and this was urged also by the Hague Convention of 1907.

Other treatises on International Law followed like the *Diplomatic Code of the Law of Nations* of Leibnitz. Various treaties like the Treaty of Westphalia (1648), Treaty of Utrecht (1713) and the Treaty of Paris (1856) dealt with some matters of international contact. International Conferences like the Geneva Convention of 1864 and the Congress of Berlin (1878) dealt with many other matters of international law. Decisions of arbitration tribunals like the Prize Courts and the Court of Arbitration set up at the Hague in 1899 and diplomatic correspondence have thrown light on several disputed points. Maine remarks, "The founders of International Law, though they did not create a sanction, created a law-abiding sentiment—a strong repugnance to the breach of certain rules regulating the relations and actions of states."

The law of neutrality was more recent. Neutrals might give loans to belligerents, but not armed help. Neutral commerce should be safe unless it carried contraband. A blockade was binding only if it was effective. Regulations for humanity in war and humane treatment of prisoners were put forward. Looting was forbidden.

From 1815-1914, peace was kept up by a concert of Great Powers. Some disputes were settled by arbitration. Conferences at the Hague (1899 and 1907) decided some matters. The Court of Arbitration set up at the Hague in 1899 had a permanent panel of 130 jurists, out of which each nation chose two, and the four chose a fifth. This body of five formed the Court. Between 1902 and 1912, fourteen disputes were settled. The Seven Powers of the Treaty of Paris (1856) laid down rules for blockade and security of neutral property in every ship. In 1863, a conference at Geneva organized the Red Cross (Geneva Convention of 1864). The same convention neutralised hospitals. In 1868, a conference summoned by the Tsar issued the Declaration of St. Petersburg, forbidding the use of bullets causing much suffering. Between 1897 and 1907, a number of conferences at the Hague adopted regulations about treatment of prisoners, forbidden wars, naval war, and rights of neutrals.

But all this regulation was in practice not effective. Though the rules of international law have been built up by legal reasoning and appealed to in international controversies, they are not in the same category as real laws. The states observed them merely as a matter of convenience. Pollock defines International Law as "a body of customs and observances in an imperfectly organized society which have not fully acquired the character of law." Machiavelli urged in the sixteenth century what Treitschke did in the nineteenth century that the whole duty of the sovereign state is to increase its power. Hence, treaties can be repudiated at pleasure. Since war is the only means for the state to increase in power, every state should be organized for war, and any attempt to banish war from the world is vain. In the two World Wars, all notions of international morality were violated. The London Naval Conference of 1908 declared as contraband some articles like materials for war, while some like rubber were not listed as contraband. Yet, in the war, this was not recognised and even foodstuffs were declared contraband. The Hague Conference of 1907 decided that a declaration of war should precede a war. Japan violated this in 1933 and Germany in 1939. The same conference declared that, if anchored mines are used, every precaution must be taken for the security of peaceful trade. Germany violated this in World War II. The Submarine Protocol of 1936 that passengers should be put in a place of safety before ships were attacked and there should be no attack without warning was violated. The Geneva Protocol of 1925 prohibiting use of poison gas, poisons and bacteriological methods of warfare was observed only by mutual fear. The ban on bombing from air, sea or land of any objectives other than military was scarcely observed. In 1929, the Geneva Convention signed by forty-seven states urged humane treatment of prisoners of war. This was also sometimes violated. The Atom Bomb destroys whole cities. In spite of the establishment of the International Court of Arbitration at the Hague in 1899, diplomatic intrigues were constant down to 1914 at the Wilhelmstrasse, Quai d' Orsay, Newski, the Porte and Downing Street.

The failure of the Concert of Powers was the result of the tradition of state sovereignty. This led to the First World War. The bitterness and misery caused by this led men to think of a new organization to keep the peace. A new system was demanded by the new conditions. This led to the establishment of the League of Nations.[1] The Covenant contained thirty-six articles and an annexe contained the list of the original members. The first article guaranteed the national sovereignty of each state. Conditions of admission were laid down, and fully self-governing colonies were eligible for admission. Withdrawal could be only after two years' notice. The chief organs were four. (1) The Assembly consisting of the representatives of each state. In many countries this delegation included representatives of the chief political parties including the Opposition. But it was always led by a delegate of the government. Each state had one vote. The Assembly met once a year, voted the budget, decided general policy and admitted new members by a two-thirds majority. All decisions except on minor matters should be unanimous. If a state resorted to war in disregard of the League, the League would subject it to economic boycott and later on armed action. (2) The Council. This originally consisted of representatives of the powers associated against Germany and her allies, with representatives of certain other states elected by the Assembly. Later, the number of members was raised to fourteen. Of these, five were permanent, representing Britain, France, Italy, Japan and Germany. The others were elected for three years. Three members retired every year, and were not eligible for election for three years, unless the Assembly lifted this ban by a two-thirds majority. But only three out of the nine could be re-elected. The Council generally met four times a year, but could hold extraordinary sessions. This decided all important matters, as the Assembly was too large for efficient discharge of work. But all decisions had to be unanimous. (3) The Secretariat-General consisted of the Secretary-General and his staff. The first Secretary-General was named. But his successors were to be chosen by the Council with the consent of a majority of the Assembly. This office apportioned expenses amongst all the members, kept records and conducted correspondence. (4) The Permanent Court of Justice was stationed at the Hague, while all the other organs were at Geneva. This consisted of eleven judges and four deputy judges elected for nine years by a majority in a joint sitting of the Council and the Assembly and eligible for re-election. The Court's functions were advisory except in cases where its compulsory jurisdiction was agreed by both the disputants. Unlike the old court, this was permanent and was expected to set up a tradition and influence. It followed international customs and conventions and equity and followed a strictly

[1] Previously, there had been plans of some kind of international organisation Sully (*Grand Design*) contemplated a redistribution of European countries into fifteen states, all to be controlled by a General Council. Kant, greatest of the German Liberals, pleaded for a society of self-governing nations to avoid war in his *Treatise on Perpetual Peace* (1795).

judicial procedure. But only governments can be parties before it. Under the covenant, the Assembly or the Council could get advisory opinions from the Court on any matter, and these were always accepted.

There were also a number of advisory and technical committees.[1] The Mandates Commission recognised in form that the states with colonies should behave as trustees which only could justify their control. The old practice of annexation or the establishment of protectorates must be replaced by regular supervision by the League to which the mandatory power should be responsible. The idea was that the subject people should be prepared to stand by themselves in eventual independence. But this mandatory system was applied only to possessions taken from the enemy powers and not to all colonies. The International Labour Organization, as an adjunct to the League, was set up by the Peace of Versailles. By 1926, 56 countries had joined it. Each year, an International Labour Conference met, consisting of four delegates from each member-state (two representing government, one, the employers and one, the workers) ; each delegate was usually accompanied by an adviser. The Conference adopted draft conventions by a two-thirds majority. Acceptance of these was left to the option of the members. But, ratification must take place, if it did, within one year, and this should be registered by the Secretary-General of the League and would be binding on the ratifying state which should submit annual reports of the measures taken to apply the convention. The first Conference met in Washington in 1919, and the others, at Geneva. An International Labour Office collected information, conducted enquiries, issued pamphlets and prepared the agenda. It was under a governing body of twenty-four (six elected by employer-delegates, six by worker-delegates and twelve chosen by the states, eight of which were recognised as of chief industrial importance). The members held their office for three years.

The constitution of the League was flexible. A change in the constitution must be approved unanimously by the states represented in the Council and by a three-fourths majority of those represented in the Assembly. The covenant had elaborate articles for limitation of armaments by agreement and avoidance of war. There must be no resort to war before arbitration. The principle of publicity of treaties was established. They should be registered in the Secretariat. In the settlement of disputes also, publicity was to play a great part.

An interesting experiment in reconciling national points of view was the establishment of the Allied Maritime Transport Council in 1917 during World War I, with a permanent executive. This worked with an Inter-Allied Food Council and an Inter-Allied Munitions Council to co-ordinate shipping to suit the needs of the Allies.

[1] For some remarks on the work of the League, see *Contemporary Review*, September and November 1930 and *Pol. Sc. Quarterly*, December, 1931.

This experiment ended in 1919. After the War, International Commissions were set up to administer the water-ways of the Elbe, the Oder, the Danube and the Rhine. For the first time in history, the Peace Treaties after World War I included the provision of an International Code of Labour.[1]

The League[2] did achieve some concrete results. But the rule of unanimity coupled with exaggerated ideas of state sovereignty crippled it. The combination of Power Politics, Secret Diplomacy and State Sovereignty continued. Refusal of U.S.A. to join it weakened it. It failed to bring about disarmament as promised in Article Eight of the covenant. Defeated powers like Germany regarded it as a group of victorious powers which tried to keep down the others. In 1933, Japan defied the League and carried on war with China. In 1936, Italy annexed Abyssinia, disregarding the League. The League lost its prestige and never recovered it. National rivalries continued unabated.[3]

The aggressive activities of the dictators which culminated in World War II roused thinkers to plan schemes of a new union of powers.

Some writers reacted pessimistically, *e.g.*, Grigg (*Faith of an Englishman*). Voight, the journalist, in his *Unto Caesar*, declares that attainment of permanent peace is impossible and collective security, not attainable. Headlam-Morley (*Studies in Diplomatic History*) shows distrust of internationalism and thinks that time-honoured methods will still continue in diplomacy. Dr. Jacks (*Co-operation or Coercion ?*) says that the League failed, because it tried to impose coercion on sovereign states in the interests of an altruism impossible for a nation. Carr (*Twenty Years' Crisis, 1919-39*) accepts the grim realism of Power Politics and believes that a world-community is not yet born. He thinks that the nation-state is likely to continue as the basis of any international organization. Marriott (*Commonwealth*

[1] The rosy hopes held out by the League of Nations find expression in Ramsay Muir's *Interdependent World and its Problems* which shows the dangers of unrestrained nationalism and discusses the best method of limiting national sovereignty through the League ; and, as a staunch Free Trader, the need for abolishing tariff barriers between nations.

[2] Zimmern (*Third British Empire*) comments on the points where the covenant of the League differed from previous instruments: (1) Signatories were far more numerous and represented most of the world. (2) The provisions were more advanced and set up a permanent administrative, deliberative and judicial machinery. (3) It was based on agreed philosophy of government. Much international co-operation was facilitated in opium traffic, health, intellectual contact etc. The new states set up after World War I were not stable for a long time owing to internal troubles. But, with the help of the League of Nations, they settled down.

[3] Rappard (*The Quest for Peace since the World War*, 1940) gives an account of the activities of the League and shows that it failed, because of the absence of a true international conscience. Acquiescence in state sovereignty in the covenant of the League was, according to him, a great mistake in principle. He thinks that the settlement of 1919 was mainly just and failure was due only to lack of boldness of the collective international will.

or Anarchy? 1940) ascribes the failure of the League to overhasty idealism.

But events showed that for a long time the world had been forced to integration in many matters.

The economic interdependence of nations was manifest even before railways and telegraph came. Europe needed English goods and capital. England needed Europe for her trade. America was concerned because of the demand for cotton from America. All this trade increased after 1850 by quick transport facilities. Companies had interests in other lands. Behind, there were financial groups who influenced the economic life of the whole world. International agreements divided markets amongst the powers. In 1836, Morse invented the electric telegraph in America and it soon spread all over the world. The telephone was invented in 1861. The electric dynamo was made by Von Siemens in 1867 who also began electric transport. Between 1866-76, the main ocean cables were laid, almost entirely by England and U.S.A. Each new means of communication was a further stimulus to convert the world into a single unit. Capital became largely international. Labour also developed world combinations. The First International[1] was founded in 1862. Every art and science had its international conference. Sport also became international.

Internationalism expressed itself in calls for disarmament, settlement of disputes by arbitration, settling boundary disputes by plebescite, placing backward areas under international control and encouragement of international contacts. Nobel instituted a prize for promotion of world peace. It was pointed out that the nation is only a transitional institution on the progress to a world-state, which is based on the social instincts of man and forces of economic and cultural integration. Internationalists also draw attention to the horrors of modern warfare. War is always brutal, in spite of medical and sanitary advance in modern times. Intense economic dislocation follows every war *e.g.*, the barometric antics of European currencies after World War I. Social consequences are deplorable. Deterioration of moral sense leads to loose moral standards and the growth of speculators, profiteers and financial adventurers. Total

[1] World War I proved that international solidarity of the working classes was not stable. The Second International fell into oblivion before the patriotism of workers of different countries. Socialists joined the coalition ministries in France. The Social Democrat Party of Germany supported the German government.

After the war, international labour movement revived. The Second International was restarted with its headquarters in London, though Russia had its own Third International. Co-operative societies joined the Co-operative Alliance with an executive in London and holding conferences every three years.

The report of the League of Nations delegation on economic depressions (1943-46), giving a general description of the nature of depressions and ways of combating them, stresses that prosperity, like peace, is indivisible.

loss of life resulting from World War I was more than twice that of all the wars of the nineteenth century. Many were disabled by the war. Large numbers were drawn away from production of goods. In France, the population in 1919 was about forty millions excluding Alsace-Lorraine. In 1921, even including Alsace-Lorraine, it had gone below thirty-eight millions. Population in Germany in 1910 was sixty-five millions. In 1919, it was only about sixty millions. There was heavy destruction of property. The most industrialised and agricultural areas of France were devastated. The war destroyed railway systems in battles or air-raids. Submarines destroyed plenty of shipping.

The use of new military weapons and scientific devices show that the true lines of human advance do not lie in vain efforts to alleviate the horrors of war. War, in essence, is "an expression of the savage forces in man". Modern wars also differ from old wars in their contagiousness. Wars could not be localised, as many of the powers are world-powers and all nations are dependent.[1] Further, political frontiers are not the same as economic ones. The people in one state are dependent on the resources of the whole world and several states invest their surplus wealth in other states. Further, modern wars are "total". Though defence forces form the nucleus, all distinctions between combatants and non-combatants disappear, as all people have to engage in the war-effort and become a "nation-in-arms". The range of destruction and loss in modern wars is also immense, taking into account the development of atomic weapons.

It is pointed out that, if civilised humanity does not abolish war, war itself will extirpate it. *Laissez faire* fails as signally in the international sphere as it had done internally. The old idea of sovereign nations dealing with each other must be replaced by the new idea of members of a world society dealing with one another. War is essentially a supersession of law by force,[2] and it is criticised that it is absurd in principle to evolve a law of war. While the law of

[1] Garner (d. 1938) showed that the Law of Neutrality could not work as *bona fide* neutrality is not possible and even a state which wants to keep out of the war cannot do so.

[2] Joad (*Why War?*) argues that war is simply due to circumstances created by man and hence not inevitable. Just as plague has been eradicated, man can eradicate war also. Burnham argues in his (*Machiavellians*, 1943) that the struggle for power is the guiding theme of world politics.

Liddel Hart, reputed writer on military strategy, in his *Why don't we learn from History?* (1944) shows that wars are not primarily due to economic or political causes but the passions of malice, pride, ambition and anger. He argues that a war which ends in victory always leads to another war, and so, a compromise peace is the best settlement. Prof. Robbins (*Economic Causes of War* 1940) points out that the Marxist theory that wars are inevitable in the capitalistic system of economy is wrong. This view may be contrasted with (*The Mirror of the Past*, 1944) of Zilliacus (*Vigilantes*) who urges the interconnection of wars, the power politics and the capitalist system. The sinister part played by the armaments industry in promoting wars is exposed (in *Death Pays a Dividend*, 1944) by Fenner Brockway and F. Mullaly.

peace usually is accepted by the states, the law of war is usually violated.

As Fisher remarks (*Commonweal*) national patriotism is at its height in a period of war. "Even people who have never consciously thought of their state are seized with patriotic frenzy, become infected by the general contagion of public service and reveal unsuspected depths of emotion and heroic power." Hence, Moltke regarded war as a great purifying influence. But, Fisher points out this fallacy. "All the virtues of patriotism can be evoked by wholesome peaceful emulation", as seen in Switzerland. He argues that the idea "My country, right or wrong" is utterly contrary to the dictates of individual conscience.[1]

Laski holds that state sovereignty has secured its purpose and champions world federation. Curtis (*World War : Its Cause and Cure*, 1945) holds that wars are due to the anarchy which governs the relations between national states and says that only an international authority can save the world. He suggests that the British Commonwealth can lead the way by becoming a federation. Owen Tucker (*History and Destiny*, 1948) blames the doctrine of national sovereignty as the root of the present international anarchy and pleads for a world government. This must precede rectification of any economic injustice. Emery Reves (*The Anatomy of Peace*) holds that there willl be wars so long as national states continue, and the only remedy is a world government.

Internationalists regard the sovereignty of the state as the chief obstacle to the rise of a world community. They regard the theory as antiquated in an age where order and peace in any one state depends on world-wide factors, and it now postulates international anarchy. The thesis maintained by Norman Angell (*The Great Illusion and The Fruits of Victory*) is that the frustration of the cultural and economic unity of the world by the divisive influence of nationalism, supported by the juristic theory of sovereignty, will end only with the establishment of an organized society of states on the basis of consent.

Norman Angell points out that mankind is now culturally united. "A professor of Oxford has greater affinities with a member of the French Academy than with a publican of Whitechapel." So, the identity between the state boundaries and human groups has lessened. He also stresses the economic unity of the world. Trade relations connect all countries and the flow of the capital is world-wide. He thinks that nationalism which is rooted in the old tribal

[1] Nationalism degenerates into Chauvinism. Miss Playne (*Neuroses of the Nations*) discusses the neurotic factors operating on the national minds of Germany and France. In her later *The Pre-War Mind in Britain*, she analyses the mind of the British people and shows that, throughout Europe, there was morbid fear and morbid jealousy leading to mental unrest, and kindling of the baser passions of the mob leading to Jingoism. Her books form a strong condemnation of nationalism. The press is also charged as the supreme mischief-maker.

prejudice against strangers and love or domination of others ignores these considerations. He regards national patriotism as a relic of the old religous fanaticism of the sixteenth and seventeenth centuries. He considers that nationalism creates conflicts of interest, wars and strategic frontier which revolve in a vicious circle. "Though there dwells the beast within the man, man's nature is malleable in accordance with circumstances, tradition and education" as is seen in the end of slavery, burning of witches, torture and duels. Delisle Burns in his *International Politics* and Woolf in his *International Government* emphasise the intricate international life, which has developed officially and privately. "The fallacy of the nationalist is that he makes a lofty impulse of service and self-sacrifice a disastrous and irresponsible mania."

Various schemes have been suggested by different writers concerning the formation of an international community. Curtis favoured a federation of the British Commonwealth alone, at first, in his *Commonwealth of God*. But this would have been too exclusive. Later, Curtis (*Decision*, 1941) suggested a federal union of all states, but restricted its functions to security, as he felt that the nation-state had a necessary place in human affairs in avoiding undesirable standardisation and uniformity. He wanted the British Commonwealth to take the initiative by forming a common legislature and a common executive, gradually extending this union to the whole world. 'Hasten slowly" was his motto. The nation-state would continue to be in charge of social affairs, tariff and taxation. A Commonwealth cabinet and legislature would look after defence and foreign affairs. Clarance K. Strait (*Union Now*) advocated a federation of fifteen states including U.S.A., France, Belgium and Holland, Switzerland, the four Scandinavian states, Britain and the five British dominions. His plea is that (1) all these are powerful, (2) sufficiently similar in institutions, and (3) their united strength would safeguard them against attack. The Union would not be a mere confederation like the League, but a true federal state. A federal legislature would tax the citizens directly and legislate for them. There would be common citizenship, common defence force, common currency common post and free trade. The executive would be a board of five elected by the citizens (which would form the Head of the State) and a Cabinet responsible to the legislature. Non-self-governing areas held by the state would be handed over to the Union to be held as a trust and to be prepared for self-government. In a later book—*Union Now with Britain* (1941)—he urges an immediate federal union of the seven English-speaking states—Britain, U. S. A., Ireland, Canada, Australia, South Africa and Newfoundland. A federal convention would draft a constitution for federal union into which other countries may be admitted. Streit attends primarily to political issues and neglects the economic and social side. Senor Madriaga (*World's Design*) suggested a World Trade Commission which would be guided by the economic interests of the whole world, a World Bank, a World Currency, and a World

Cultural Association to promote good will and understanding. Harold Nicholson (*Why Britain is at War?*) favoured a United States of Europe. The army of each state would be reduced to the minimum needed for internal security and should have no aircraft, civil or military. The Federal State would have a strong air force and also operate all international air services. Ludwig (*Holy Alliance*) and Lord Lothian (*Ending of Armagaddon*) outlined their plans of union. Sir William Beveridge[1], discussing the question of world federation, emphasised the need for limiting its area to units which would be close together. The federation would control defence and foreign affairs. Reith (*Police Principles and the Problem of War*) suggested an international force based on police principles to prevent war. Curry (*Case for Federal Union*, 1940) refuted objections to it. Greaves (*Federal Union in Practice*, 1940), basing himself on the historical development of federation in U. S. A., Switzerland, and Canada, does not think that a Federal Union is an Utopia. Schwarzenberger (*Power Politics*, Rev. ed. 1951) thinks that federation is the only alternative to power politics. Carr (*Nationalism and After*, 1945) thinks with Lippmann that any world organization cannot police a policeman and the best solution would be regional groups under the spheres and leadership of U. S. A , Britain, Russia, France and China. Jennings (*A Federation for Western Europe*, 1940) suggests a Union of Britain, Eire, Scandinavian states, Finland, Iceland, Holland, Belgium, Luxembaurg, Switzerland, France and Germany. Other states in Europe would be admitted if they become democratic. Defence, Foreign Policy and Inter-state commerce will be federal. An interesting scheme put forward by Keynes in 1943 was to create a Currency Stabilisation Fund to which all countries would make a contribution This would provide foreign exchange for all nations. But no nation should exclude another from its markets. The Fund would supply all necessary resources for stabilising the currency also. Harold Wilson (*The War on World Poverty*, 1932) pleads for setting up a World Development Authority to co-ordinate and develop economic progress of backward areas as a joint operation of mutual aid between all the countries.

In a world federation, the states gain a new strength. Loss of independence is compensated by a new, fuller and vigorous life. There is great economy in administration, as useless duplication of services is avoided and large-scale management is applied to several matters. At the same time, each individual state can preserve its local autonomy, customs and traditions. . There has been a big controversy over the advantages of small states and big states. H. A. L. Fisher (*Studies in History and Politics*) asserts that almost everything which is precious in our civilization has come from small states. The greatest security for the progress and vitality of civilization is that there should be the greatest possible variety among civilised states. He instances the city state as a school of

[1] *Deeper Causes of the War* (1940) eight addresses delivered under the auspices of the British Institute of Philosophy of which this is one.

patriotic virtue and claims that a small state raises the value of the individual also. Marriott (*European Commonwealth*) concludes, however, that the balance of advantage is with big states. Chance of peace over relatively extended areas is increased and local prejudices are lessened. Seeley and Bryce also favour big states. Older writers on political science condemned large states as unwieldy ; but this defect can be countered by the modern developments in transport and schemes of decentralisation of power. Federation will combine the merits claimed for both small and big states. Security and culture of the state are preserved along with international peace and order. Federation is the only possible method to permit communities which could not be united at all otherwise to come into some union.

Under the plan proposed in the Dumbarton Oaks Scheme after the Second World War, a Security Council consisting of eleven members (five permanent, representing Russia, Britain, U. S. A., China and France, and six elected for two years) was formulated. The Assembly was to be like the old League Assembly. A Security Council will prevent aggression, arrange for arbitration, and call for armed help from members if needed. As before, there was to be a Secretariat. As before, the Assembly could only recommend and it was left to the members to take action. Another body called Economic and Social Council will deal with economic and social questions. The Assembly alone will decide the budget. The scheme formed the basis of the scheme of the United Nations Organization.

The Charter of the U.N.O., in its preamble and the articles, lays stress on individual human rights, thus departing from the traditional stress on states in International Law. The original idea of the Charter was to make the Security Council, which is the executive, protector of world peace. Article 27 makes the assent of the five permanent members (Britian, France, U.S A., Russia and China) essential to any decision. This was the logical result of the dominance of these powers and the fact that they would have to bear most of the risk and burden in the case of collective sanctions. The reason for their permanent representation was also the feeling that they would be in a position to guard world peace because of their strength. This has, however, led to the failure of the Council to find solutions for disputes. Unfortunately, tension between the Great Powers after the war has made the Council not the instrument to solve disputes but one to ventilate different ideologies. This has also shifted the emphasis from collective security to regional pacts for security and self-defence. Under Article 10, the whole field of international relations is open for discussion by the General Assembly, and in 1950, the Assembly took into account lack of unanimity which paralysed the Security Council and resolved that in such cases "the Assembly shall consider the matter immediately with a view to making appropriate recommendations." But very little progress has been made on questions like disarmament.

Like the League of Nations, the United Nations started as an organization of the victors in the war, and provision was made for immediate accession of neutrals and eventual admission of the vanquished. Fifty nations signed its Charter in 1945. In 1949, the members were fifty-nine. Many applications for admission are still pending. Like the League. the object is the maintenance of international peace, and there should be no interference in the internal affairs of member-states. As before, there is a General Assembly representing member-states. But its powers are small compared to those of the League Assembly. All real decisions are with the Security Council (corresponding to the old League Council). Discussion is carried on mainly in the Political Committee of the Assembly in which every member-state has one vote.

The Security Council has five permanent members representing Britain, France, U.S.A., Russia and China and six elected by the Assembly for two years, chosen by convention according to regions. Decisions of the Security Council, which are binding on all the members, must be by an affirmative vote of seven members including the permanent members. This power of 'veto' paralyses the Council in cases of disagreement between the Great Powers. The Security Council, if its efforts at negotiations fail may call for "sanctions" (now termed "enforcement measures")—economic and diplomatic, and later on, military. All member-states are bound to supply forces for this purpose. But no agreement has been made so far regarding this.

The Economic and Social Council has eighteen members and has a number of commissions working under it for various matters *e.g.*, population and regional commissions for Europe, Asia and the Far East, Middle East and Latin America.

The Trusteeship Council consists of the five Great Powers, representatives of colonial powers and of states chosen by the Assembly. It has succeeded the Mandates Commission. The Trusteeship Council which looks after the administration of the Colonies is an improvement on the Mandates Commission. But, while administering authorities[1] cannot be members of the Mandates Commission, they are *ex officio* members of the Trusteeship Council and can hinder action.

There is a Secretariat as in the old League. The U.N. has also an International Court of Justice at the Hague, consisting of 15 Judges elected for nine years by a majority of the Assembly and Security Council meeting separately.

More important are the specialised agencies which deal with particular problems of the world like the Food and Agricultural Organisation, the World Health Organization, and other organizations which are linked to the U.N. through the Economic and Social

[1] In 1955, there were seven powers administering eleven 'trust areas.

Council. One of these, the Human Rights Commission, has promulgated a Universal Declaration of Human Rights. The International Bank for Reconstruction and Development (World Bank) has provided expert advice on financial matters and advanced loans to needy countries. The International Labour Organization is doing valuable work, as also the International Court of Justice. An Internatioual Law Commission is codifying International Law.

In 1946, after a life of twenty-five years, the League of Nations was dissolved and all its assets were transferred to the U. N. O. The World Court set up by the League was dissolved. The new Court of International Justice was opened in 1946 at the Hague as part of the U.N.O. A conference of fifty-three nations at Havana in 1948 agreed to reduce tariff which hindered trade and develop world trade. The trial of political and military leaders who organized aggressive war and inhuman methods of war set a new landmark in international law and morality. But the nation-state is still wedded to its political and legal sovereignty, claiming loyalty of its citizens to itself as against loyalty to humanity at large and restricting flow of trade and ideas by economic and social barriers.

Nationalism is still powerful. It has led to the creation of the new state of Israel in Palestine in spite of great obstacles. Poland, saddled with an Ukranian minority in the east and a German minority in the West after the First World War, had to cede the former to Russia and expel the latter after the Second World War. Welsh and Scottish nationalism is active in the British Isles. Nationalism induces Eire to claim Ulster and led to the independence of India and Indonesia. But, history of the war shows that national isolation cannot be any protection. The German conquest of Belgium, Holland and Norway was a matter of days. Hence the development of regional pacts. Russia is the head of an association of Communist nations. U.S.A. is the head of an opposite group. This has affected the working of the U.N.O. This is illustrated in the Korean War.

The partition of Korea, like that of Germany, was the result of Allied disagreement after the Second World War. The Potsdam Agreement recognised North Korea as Russia's responsibility and South Korea as America's. The ultimate union of the areas was the aim, but could not be secured. A "People's Government" on the Communist model appeared in North Korea. South Korea became a state with a Western type of parliamentary system. In 1950, war broke out between the two. The United Nations Security Council declared North Korea an aggressor and called for help to South Korea. Since Russia was boycotting the Council then as a protest against recognising the Kuomintang government as the government of China for the seat in the Council, the Security Council was able to act thus without fear of the veto. With the later return of Russia to the council, further unity of action became impossible. The war itself has been indecisive. Nineteen United Nations countries

contributed forces, and twenty-three others supplied medical and material aid.

An example of regional pacts is the North Atlantic Pact signed at Washington on April 4, 1949 by twelve nations (Britain, U.S.A., France, Canada, Belgium, Holland, Iceland, Luxembourg, Italy, Portugal, Norway and Denmark). Greece and Turkey joined it in 1952. The life of the pact which originally was for twenty years was extended to fifty years in 1952. Article 5 commits the powers to mutual defence in case of attack.

The Brussels Pact of 1948 between Britain, France, Belgium, Holland and Luxembourg provided for mutual help in case of war. The Pact is the nucleus of the Council of Europe with its seat at Strasbourg. The Statute of this Council (1949) united the Brussels Pact countries with the Scandinavian states, Eire and Italy. Greece, Turkey and Iceland joined later, and Germany in 1951. Article 3 lays down that every member must accept the rule of law and human rights. A committee of foreign ministers forms the executive, but its decisions are only advisory. A Consultative Assembly is elected by the members according to population and has deliberative functions. The Assembly has made important suggestions on common European matters. It held its first meeting at Strasbourg in August, 1949.

The European Parliamentary Union called in 1948 a meeting to draw up a plan of European unity. The delegates were from parliaments west of the Communist bloc. The plan is for a Federation of Europe to look after foreign policy, defence, customs, currency and essential services. The federation will have a president and a legislature of two houses. More important than this plan was a proposed pact (1952) between France, Belgium, Italy, Holland, Luxembourg and West Germany for an European Defence Community with integrated defence forces. This was to be linked up with the North Atlantic Treaty Organization (NATO) and was regarded as preparing the way for a Federation of Europe.

The European Defence Community Treaty defined it as a Community "of supra-national character, with common institutions, common armed forces and a common budget." It was to be within the NATO framework and bound members to mutual defence. An Assembly and a Council were to be set up. A Board of Commissioners would look after the administration. A court would decide disputes. The E. D C. did not function, as France did not ratify it. So, the Brussels Pact was enlarged into the West European Union by the admission of West Germany and Italy.

The Treaty constituting the European Coal and Steel Community (commonly called the Schuman Plan because it was sponsored by the French foreign minister, Schuman) provided for joint action for the heavy industries of West Germany, France, Italy and the Benelux countries. A High Authority chosen by the members decides all

matters with binding force. It is helped by a Consultative Committee representing producers, workers, consumers and traders which has advisory functions. An Assembly representing members meets once a year to discuss the reports submitted by the High Authority. It can dismiss the High Authority by a two-thirds vote.

Unlike the North Atlantic Treaty where the two American powers of Canada and U.S.A. are members, the Council of Europe and the European Coal and Steel Community are purely European organizations which, however, receive economic help and political backing from U.S.A.

The Benelux Union, composed of Belgium, the Netherlands and Luxembourg, co-ordinates the economic policy of these countries. The seven Arab states (Egypt, Iraq, Lebanon, Saudi Arabia, Syria, Jordan and Yemen) have formed an Arab League for political and military co-operation, but it is not yet effective, as some of the states are unstable and some have divergent policies. The Balkan Alliance formed in 1954 included Greece, Yugoslavia and Turkey. The British Commonwealth is another unit based on fundamentals which hold the members together—tolerance of races and cultures, respect for freedom and adherence to democracy. A meeting of Commonwealth Ministers at Colombo in 1954 prepared the Colombo Plan for the economic development by common effort of India, Pakistan, Ceylon and the British territories in Malaya and Borneo. Britain, Canada, Australia and U.S.A. have promised to contribute aid. The Colombo Plan Nations became increased to seventeen by 1954 by admitting some other Asian powers. The Organization of American States includes the U.S.A. and the Latin American states.

U.S.A.'s interest in the recovery of Europe begins with the Marshall Aid Plan (called European Recovery plan) of 1947 begun by Marshall, Secretary of State. This helped the economic recovery of seventeen states of Western and North-western Europe which accepted this help. An organization for European Economic Corporation was set up under this plan. The European Payments Union set up in 1950 has the aim of making the currencies of these E. E. C. countries freely convertible into each other and thus help trade amongst them. The Mutual Defence Assistance Programme sponsored by U.S.A. in 1949 provided for American help in military supplies and technical advice. The following nations received such aid by 1954 :—Britain, France, Belgium, Holland, Luxembourg, Denmark, Norway, Portugal, Spain, Yugoslavia, Greece, Turkey, Iran, Korea, the Philippines, Japan, Thailand, many states of Central and South America and Pakistan. In 1951, U.S.A. concluded a defence treaty with Australia and New Zealand (*Anzus Pact*) modelled on the North Atlantic Treaty and a parallel treaty with the Philippines. She initiated and brought about a South East Asia Treaty Organization which included Britain, France, Australia, New Zealand, Pakistan, the Philippines, Thailand and U.S.A. A defence treaty with the Nationalist Chinese Government at Formosa followed in 1954.

The nucleus of a Middle East Defence Organization was formed in 1955, starting with Turkey, Iraq and Pakistan, again with American encouragement. A number of powers like India feel that such alignment of powers, on one side or the other, is likely to bring about a dangerous state of tension, likely to precipitate war. On the other hand, India is putting forward certain principles of co-existence called *Pancha Sila* comprising (1) mutual respect for each other's territorial integrity and sovereignty, (2) mutual non-aggression, (3) mutual non-interference in each other's internal affairs, (4) equality and mutual benefit, and (5) peaceful co-existence. These principles have been accepted by a number of powers including Burma and Indonesia.

Our country has played a notable part in softening international tensions, occupying a unique position between the two power *blocs*. She has also played a conspicuous part in initiating Asian co-operation for common purposes. The first Asian Relations Conference met in Delhi in 1947, consisting of representatives of nineteen countries. The immediate object of the conference was to urge the independence of Indonesia from Dutch sway. Since then, several conferences have been held. It may be noted that the two groups of which India is a member—the Commonwealth and the Colombo group—have no relevance to the ideological grouping of powers which is such a conspicuous feature of modern politics. It has been proposed to expand the conference of the Asian powers into a conference representing the independent states of Asia and Africa, the first meeting to be held in 1955.

It is undeniable that only peaceful and co-operative efforts of all the countries of the world can lessen tensions and create a climate of peace in which pending problems can be solved.

PART TWO

CHAPTER I

BRITAIN

The main features of the British Constitution can be enumerated as follows.

The British constitution is largely unwritten while almost every other modern state has a constitution which contains the basic principles, the powers and functions of government as well as the rights and liberties of the people. Britain is the only country among the major powers of the world which has not a written constitution. Though the British do not possess any single document drawn up by any body of men and promulgated on a given day and embodying the powers and functions of the government as well as the guaranties of rights and liberties of the citizens, they have a number of constitutional documents, charters and acts of parliament which are illustrative of the development and to some extent the working of the constitution. The most important of them are the Great Charter of 1215, the Petition of Right 1628, the Bill of Rights 1689, the Act of Settlement 1701, the Acts of Union with Scotland 1707 and with Ireland 1800, the Reform Acts 1832, 1867, 1884-1885, 1918, 1928, 1944 and 1948, the Parliament Act of 1911 and the Amending Act 1949, the Abdication Act of 1936, the Royal Titles Act of 1953 etc. None of these documents can give us a complete picture of the working of the British constitution. Further, even all the acts and documents taken together cannot give us a complete idea of the working of the British constitution, for the constitution is to a very large extent based on conventions or customs or precedents and usages of the realm. By way of contrast, the American constitution is a single document drawn up by the Philadelphia Convention of 1787 and finally adopted by the U.S.A in 1789 to which twenty-two amendments, most of them very short, have been subsequently added. Again, the constitutions of Canada, Australia, South Africa, New Zealand and Ceylon, are embodied in constitutional documents, a study of which would give us more or less a complete picture of their constitutions. Similarly, the constitution of the Fourth French Republic of 1946 is a written document ; also the constitution of the Italian Republic of 1947, the constitution of the Federal Republic of Germany as well as the constitution of India, are all written. They are all the products of a constituent assembly specially convened for the purpose of drawing up a constitution for the countries concerned. But, unlike the constitutions of U.S.A., India, etc., the British constitution is not completely written. It is unwritten in the sense that its constitution is not embodied in any all-inclusive, single authoritative

document or act of parliament as a compact whole. No body of men can be said to be responsible for it. No particular date or year or period can be assigned to the British constitution. It is a product, not of a constituent assembly, but the result of a long and imperceptible evolutionary process. It is an unwritten body of customs and precedents, the outcome of unpremeditated growth. The constitution consists of the more important offices and agencies of government such as the monarch, the parliament, courts of law, civil service in addition to certain fundamental principles on which they are based like the supremacy of the law, due process of law, civil liberties, free elections, majority rule with adequate opportunities for the expression of the viewpoints of the minorities. While some portions of the British constitutions are embodied in actual historical documents or charters or acts of parliament, a major part of it is unwritten. For instance, the cabinet system of government, the position of the Prime Minister, the parliamentary system of responsible government etc., none of these things—every one of which is very vitally important in the working of the British constitution—is contained in any written document Commenting on this unique feature of the British constitution Marriott remarks, "This vagueness or reticence of the English constitution is at once the despair and the admiration of foreign publicists. At every turn, they are baffled by the lack of authoritative texts. But, they are candid enough to perceive and to emphasize the political advantages of the English method."

No modern constitution can be completely understood from a study of the text of the constitution, but yet the importance of a written constitution cannot be overestimated. As pointed out by Lowell, "The constitution of England differs from those of other countries rather in degree than in kind. It differs in the fact that the documents, being many statutes, are very numerous, and the part played by custom is unusually large" To sum up, the British constitution is unwritten in the sense that there is no single document or act in which the whole of the constitution has been clearly and definitely written down ; and such portions of the constitution which are written often differ remarkably from actual constitutional practice. It is therefore noteworthy that, among the major powers of the world, England stands unique in her lack of a written constitution.

Another significant feature of the British constitution is its exceptional flexibility. On account of the fact that it is largely unwritten consisting for the most part of conventions and usages, the constitution is extremely flexible. Generally speaking, the constitutions of unitary states are flexible, when compared to those of the federal states. But the remarkable thing about the British constitution is that even among the constitutions of the unitary states it is the most flexible. In fact it is the most flexible and the least rigid among the existing constitutions of the modern world. Where the constitutional law and ordinary law can be changed in exactly the same way *i.e.*, by the ordinary process of law-making, the constitution is said to be flexible, where a special procedure is prescribed for the

amendment of the constitution, the constitution is said to be rigid. In England, there is no special process for changing the constitution as in countries like U. S. A., France, Italy, Canada, Australia or India. In England, there is no difference whatever between constitutional law on the one hand and ordinary law on the other, between the amendment of the constitution and the enactment of ordinary law, between the constituent function and the legislative function of the British parliament. The legal supremacy of the parliament in England is a well-recognised feature of the constitution and any constitutional change can be brought about by the ordinary process of law-making. The flexibility of the British constitution consists not merely in the ease with which it can be changed or altered by ordinary legislative process but also in its remarkable adaptability to changing needs and circumstances. In other countries, a special method is prescribed in the constitution itself for bringing about amendments to the constitution, and in all those countries the prescribed special method is not only completely different from, but also more difficult, complicated and cumbersome than the ordinary legislative procedure. The difficulty in amending the constitution produces a spirit of conservatism which in turn makes the constitution really rigid ; but the British constitution is extremely flexible. For instance, even such changes as vitally affect the working of the constitution like the Parliament Act of 1911 and the Amending Act of 1949, both of which have deprived the House of Lords of its real powers, and the Abdication Act of 1936 which legalised the abdication of Edward VIII and placed on the English throne his brother George VI, were brought about by the ordinary legislative procedure. Speaking on this feature of the British constitution, Anson observes, "Our government can make laws protecting wild birds or shell fish and with the same procedure could break the connection of church and state or give political power to two million citizens and redistribute it among new constituencies." Thus the constitution of England is the most flexible of the existing modern constitutions.

Another noteworthy feature of the British constitution is that it is characterised by the doctrine of parliamentary sovereignty, the legislative omnipotence of the king in parliament. To quote Sir Edward Coke, "The power and jurisdiction of parliament is so transcendent and absolute that it cannot be confined within any bounds. It hath sovereign and uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving, and expounding of laws, concerning matters of all possible denominations, ecclesiastical or temporal, civil, military, maritime or criminal." Dicey's *Law of the Constitution* is mainly an extended commentary on the same text. He sums up the doctrine of parliamentary sovereignty into three simple propositions : (1) In England there is no law which parliament cannot make ; (2) there is no law which parliament cannot repeal or modify ; and (3) there is no marked distinction between constitutional law on the one hand and the ordinary law on the other. After giving many illustrations to prove the three propo-

sitions cited above, he draws our pointed attention to the Septennial Act of 1716 which not merely extended the duration of future parliaments from three to seven years but actually prolonged the existence of the sitting parliament for that term. He quotes with approval Dr. Priestly's argument that, if a parliament elected under the Triennial Act of 1664 would legally prolong its existence to seven years, there was nothing to prevent another parliament elected under the Septennial Act from extending its term from seven to seventy years or even seven hundred years. He concludes that the Septennial Act of 1716 is a standing example, a crowning illustration and a most convincing and conclusive proof of the doctrine of parliamentary sovereignty. To quote Dicey, "That act proves to demonstration that, in a legal point of view, the parliament is neither the agent of the electors, nor in any sense a trustee of its constituents. It is legally the sovereign power of the state, and the Septennial Act is at once the result and the standing proof of such parliamentary sovereignty."

Parliamentary sovereignty means that the supreme power in the country is vested in a body known as King-in-Parliament comprising the King, the House of Lords and the House of Commons. This body has the legal power either to make any new law or to repeal it. Its power is so very absolute and unlimited that it is humorously said that it can do anything and everything except make a man a woman and *vice versa*. The value of this principle of parliamentary sovereignty is that it enables the law courts to make decisions without raising the question of the competence of the legislature to pass a law. In other words, in England, there is no possibility of any legislation being questioned on the ground of unconstitutionality. The law courts have simply to interpret and apply the laws as passed by the parliament By way of contrast, in countries with a written constitution and, particularly, in a federal state, any law passed by the federal legislature, either in contravention of the spirit of the constitution or in excess of the powers conferred upon it by the constitution, would be declared *ultra vires* by the federal court. But, in England, such a thing is entirely out of the question. The parliament is legally the sovereign power of the state with neither an equal nor a superior, and the duty of the judges is very clear, *i.e.*, they must simply interpret the laws as passed by the parliament. They have no right to question the validity of the laws passed by the parliament, but if there should be any conflict between an earlier and a later act of parliament on the same subject, the judges must apply the later law as being the latest expression of the mind of the nation as expressed through its representative organ *viz.* the parliament.

The doctrine of parliamentary sovereignty might lead one to conclude that legally it can do any thing and every thing. The most dangerous conclusions that can be drawn of this aspect of parliamentary sovereignty are that it might prolong its own existence indefinitely and make it almost perpetual. In other words, elections might be postponed indefinitely or a new machinery might be created which would make it impossible to know the popular verdict on the

constitution of the House of Commons. But it must be remembered that the power of parliament, though theoretically and legally absolute and unlimited, is in fact subject to a number of real restrictions, apart from the obvious factor that parliament is concerned with human beings and should work with human instruments. The first great practical limitation of the sovereignty of parliament is geographical *viz*, that it cannot pass laws applicable to areas beyond its territorial jurisdiction. In the second place, it is also limited by public opinion. It cannot pass radical and revolutionary laws for which it has not received a mandate at the time of the general elections, and the mandate of the people is constantly being modified in the light of the country's reaction to existing laws and proposals of reform. Thus, the fear of a public revolt is a powerful and wholesome check on the legislative omnipotence of the parliament. Finally no parliament can pass laws binding future parliaments.

A distinction must also be drawn between political and legal sovereignty. Though the sovereignty of parliament means that the law courts will punish offenders against statutory laws, the courts cannot enforce legislation unless it is more or less in accordance with the national will. For instance, Trade Unions could not be suppressed or rooted out of existence even if parliament were misguided enough to attempt such a task. Similarly, freedom of religion cannot be denied to any British citizen if an act of parliament attempts to abolish it. In short, parliamentary sovereignty is a theory for courts of law and is maintained there, but real power in the community is to be found in the organised groups, large and small, which together make up the social unit of which the state is the political embodiment. Political topics have become a permanent feature of everyday conversation among the British. Criticism of the government is an admitted privilege of every citizen. A number of voluntary organisations exist, for the purpose of educating the public in affairs of state. Party organisations are always at work preparing for some election or other, holding conferences, passing resolutions and making broad declarations of policies, and parliament cannot afford to neglect these activities. Therefore, the greatest practical limitation on the legal sovereignty of parliament is the fear of public opinion. In other words, it cannot pass any law which is not in accord with the popular will.

Another remarkable feature of the British constitution is the acceptance of the Rule of law. In England, all Englishmen except the King are legally equal before the law. Again, there is only one law for all irrespective of position or power, one law for premier and peasant alike. Dicey lays much emphasis on the rule of law. According to him, this is the most fundamental characteristic of the British constitution. It is the negation of the rule of might or force or privilege. According to it, law is supreme everywhere and, every one, except the king, is subject to the same ordinary law and the ordinary law courts. In England, both officials and non-officials are subject to the same law and law courts, whereas in France there are special courts called administrative courts to deal with cases arising between

government officials on the one hand and private citizens on the other. In short, the rule of law emphasizes legality and impartiality. It is opposed to arbitrary government and privileged or preferential treatment for one citizen against another. Lord Hewart defines the rule of law as "the supremacy or dominance of law as distinguished from mere arbitrariness or from some alternative mode, which is not law, of determining or disposing of the rights of individuals."

In Britain, as there is no written constitution, there is also no such thing as a Bill of Rights or list of fundamental rights which has now become a fashionable feature in all written constitutions. Further, the rights of the citizens are not included in any single document,—and some of the rights are not mentioned in any document at all; yet, the citizens have been in the enjoyment of rights and liberties much the same as in other countries with written constitutions containing a chapter on fundamental rights. In Britain, the best guarantee of civil liberty is the principle of the rule of law.

The rule of law involves the following important principles. No one can be punished except for breaches of law established in the ordinary legal manner before the ordinary courts. The implication of this principle is that in the English constitution of today there is no place whatever for the prerogative courts of the seventeenth century which served as effective instruments of Stuart tyranny like the Star Chamber, the High Commission, the Council of the North etc. On this principle depends the citizen's right to personal liberty, freedom of the press and the right of public meeting. If there is any interference with the liberty of the person, the affected person has a right of legal action. For wrongful imprisonment, the individual can claim damages or apply for the writ of *Habeas Corpus*, (which may be suspended only under grave emergencies but which must be restored as soon as possible and practicable). It secures personal liberty. The right to freedom of speech and of the press is limited by laws relating to libel, defamation as well as those relating to sedition. Hence, on either side, there are checks combined with freedom.

No body can plead that he was simply obeying the orders of his superiors in jurisdiction for disobeying the ordinary law. Every one should take the responsibility for his own act, the only exemption being the King or the Queen. This rule applies even to soldiers. They are amenable to two systems of law, civil as well as military law. The soldier is bound to obey the orders of his superiors, but if this brings him into conflict with the ordinary law, he must suffer the consequences. The orders of his superior officers will not justify his action for the soldiers are under military laws as soldiers but as subjects they are under the ordinary civil laws. In other words, their military character is imposed upon their civil character and does not affect their civil character at all. In short, the rule of law does not recognise any privileged position or preferential claim to any person, whether he is a government official or a non-official. To quote Hogan and Powell, "The persons who compose the government of the day

cannot do just as they please but must exercise their powers strictly in accordance with the rules which parliament has laid down." If any officer should act in excess of his authority, he can be taken to task in a court of law and punished if found guilty, in the same manner as any other private citizen. The general principles of the constitution are mainly deduced from the rights of private individuals as decided by the law courts. The rights of individuals are the source and not the result or consequence of the law of the constitution. In states with a written and therefore more or less rigid constitution, the opposite of this principle is true. Individual rights are derived from the general principles laid down in the constitution. In England, practice is more important than theory. The Englishman is therefore anxious that the courts of laws should be free from the influence of the crown and the military. Liberty of speech, of public meeting and of the press etc., have all arisen out of ordinary private law relating to private persons.

In Britain, there were no special courts like the administrative tribunals as in France to try cases in which government officials are involved as parties for offences committed by them in the performances of their official duties and functions. The special courts in England such as the courts martial are subordinate to the ordinary courts. Their limits are fixed by the ordinary courts. Even when the exception is made in favour of the king in accordance with the constitutional maxim that the king can do no wrong, some officer or other accepts the legal responsibility for all the official acts of the king.

In recent years, attempts have been made to extend the principle of immunity to government departments. This tendency is criticised by Lord Hewart. Further post-war legislation has limited the rule of law by removing a number of cases between public departments on the one hand and the private citizens on the other from the jurisdiction of the law courts. In such cases, the minister or public department is empowered by statute to decide judicial questions arising out of the business of the department. Such decisions are usually deemed to be final, no appeal being allowed to the ordinary law courts. Yet, government departments have been prevented from trespassing on the province of the judiciary by the judges, who have taken every possible precaution for the purpose. Though the practical harm of giving quasi-judicial powers to government departments can easily be exaggerated, so far no great abuse has taken place. Decisions have been arrived at without much delay which is an inevitable feature of the ordinary law courts. The question whether a government department is acting *ultra vires* can always be raised in the ordinary law courts and this is considered an effective check on officials and ministers who are tempted to overstep their statutory powers.

Another conspicuous feature of the British constitution is its unreality. It has been said with equal accuracy and cynicism that in the British constitution "nothing is what it seems or seems what it

is." Bagehot also makes an implied reference to the same feature of the British constitution when he describes it as a "veiled republic". In other words, there is a vast difference between the theory and practice between the form and fact in the English constitution. In theory, the government of the United Kingdom is an absolute monarchy. In form, it is a limited monarchy or a constitutional monarchy. In fact, it is a full-fledged democratic republic, the king having been reduced to the position of practically a rubber stamp. The English constitution is based very largely on conventions and precedents. For instance, the relations between the House of Lords and the House of Commons depend on many things in addition to the Parliament Act of 1911 and the Amending Act of 1949. Again, the relations between the Prime Minister on the one hand and his colleagues on the other are all governed by conventions. Further, the work of the permanent civil servants and the actual role played by them in the government of the country is a matter in which the practice is entirely different from the principle of the constitution.

Another outstanding feature of the British constitution is that it is characterised by Parliamentary Democracy with a cabinet consisting of the most prominent leaders of the majority party in the House of Commons, who are all members of one or the other House of Parliament and who are all responsible to the House of Commons individually and collectively and all of whom can be driven out of office by a displeased or a censorious House of Commons. In other words, at the time of the general election, the people at large elect the representatives ; when the election is over, the majority party in the House of Commons has a responsibility for forming the ministry and carrying on the government of the country subject to the criticism of the Opposition.

Thus, though in form the Government of the United Kingdom is a limited monarchy or as the phrase goes "monarchical democracy", in reality government is carried on by the elected representatives of the people in accordance with public opinion. In short, government by general consent of the people is the corner-stone of the British constitution. Thus, British democracy is a full-fledged parliamentary democracy in no way less democratic or less republican than any other democracy in the world. And it is based on the ultimate sovereignty of public opinion which is the key-stone of the British constitution.

At any rate, since the Revolution of 1688, the monarchy in England had been deprived of all its arbitrary powers and, almost from that time and especially after the Hanoverian accession to the English throne, it became established beyond any shadow of doubt that in England the executive should be chosen from the parliament, should be subordinate to the House of Commons and should be responsible to it implying thereby that it is liable to be ousted from office the moment it loses the confidence of the majority party in the House of Commons. It is this outstanding feature of the British

democracy that differentiates and distinguishes it from the Presidential or Federal democracy as it obtains in the U.S.A.

This feature of British democracy *viz.*, Parliamentary democracy with a cabinet responsible to the legislature deserves special attention by students of Politics, for the choice of all democratic countries today lies between these two forms of democracy : (1) Parliamentary Democracy of the British type and (2) Presidential Democracy of the American type.

The Swiss democracy, in spite of the fact that it has an elected President, is neither Parliamentary in the English sense nor Presidential in the American sense, but it is in genius and essence directly democratic France, like England, is definitely Parliamentary. But the remarkable feature of British democracy is that it is unreservedly Parliamentary. In all the other democracies, Parliament has a rival in the form of the constitution or the Fundamental Law ; in some of them, it has even a superior, for instance, in the U.S.A., the Federal Legislature *viz.*. the Congress is not completely sovereign. Its laws are subject to (1) the executive veto, *i.e.*, the limited or suspensive veto power entrusted to the President and (2) judicial veto, *i.e.*, laws passed by the Congress may be declared *ultra vires* of the constitution if they are found to be either against the spirit of the constitution or in excess of the powers granted to it by the constitution. In England alone, Parliament is legally supreme without either a legal superior or a legal rival or competitor. In short, Parliament is sovereign. Parliamentary democracy in England therefore implies not only the legislative omnipotence of Parliament but also a constant and continuous control of the executive by the sovereign Parliament.

Thus, British parliamentary responsible democracy has become an object of envy and admiration as well as emulation in the whole world. The British parliament is generally spoken of as the ' Mother of Parliaments" and this phrase is not a mere poetical exaggeration or fiction. In fact, it has the unique distinction of having been by far the most closely most widely and most successfully copied by many a state in the world. For instance, the governments of the British Dominions such as Canada, Australia, South Africa are all closely based on the British model. The continental parliamentary governments such as those of the Third and the Fourth French Republics and the post-war government of Japan were all close imitations of British cabinet government. Even in India, we have adopted the British cabinet government. Thus, hardly a plan of government anywhere in the civilized world fails to reveal the significant influence of the British government. Many countries have directly adopted the British model in most of the fundamental features. Thus, no matter by whatever name the legislatures in other countries are known, it is an undoubted fact that they have all a common parentage.

Another striking feature of the British constitution is that it is based on a highly developed party system. Just as the credit or the glory of having developed Parliamentary democracy belongs to

England which is generally referred to as the home of Parliamentary democracy or constitutional government, so also the credit for having been the first country to adopt quite successfully the party system of government must be assigned to England. It is worthwhile remembering in this connection that political parties as such came into existence in England during the reign of Charles II as a result of the Exclusion Bill which aimed at excluding from the English throne James, the brother of Charles II, for the reason that he was a devout Catholic. Though the bill did not become law, the supporters of the Exclusion Bill came to be known first as the Petitioners, later by the nickname of the 'Whigs', and later still in the nineteenth century as the Liberals. On the other hand, those who opposed the Exclusion Bill were known first as Abhorrers, later still by the nickname of Tories and since the nineteenth century as the Conservatives. Each of these political parties had their own principles, policies and programmes totally different from those of the other. Party government as such was established in England during the reign of William III. And, since his time, largely on account of the development of the cabinet system of government for which Sir Robert Walpole was in great part responsible, government by the majority party in the Commons became a settled and undisputed feature of the British constitution. Though other countries also have adopted the party system of government as a useful device for the smooth and successful working of democratic government, the party system of government as it functions in Britain is really peculiar. In the U.S.A. as soon as the election is over, the political parties cease to be very active. But, in England, the political battle between the rival parties is very active not only at the time of the election but also after the election is over, when the struggle is continued with greater vigour and intensity in the Parliament, where on practically every question of vital importance, His Majesty's government and the regular official opposition called His Majesty's Opposition cross intellectual swords and try to establish their respective cases. Thus, in England, government is being run by the majority party in the House of Commons in accordance with public opinion and subject to the criticism of the policy of the government by the Leader of the Opposition whose importance has been recognised by the Ministers of the Crown Act of 1937 which provides for him a regular salary of £2000 per year out of national funds.

Another significant feature of the British constitution is that it is based not on the principle of separation of powers and functions as in the U.S.A. but on the principle of fusion of powers or concentration and co-ordination of power, responsibility and leadership. Thus, the cabinet, which is only a committee of the Parliament, is the real executive in England which enjoys initiative and leadership not only in administration, but what is more, in legislation as well. The British constitution has two apparently contradictory features : (1) there is an element of separation or isolation about the various departments of the government which suggested to the French

philosopher, Montesquieu, the idea of the existence of the separation of powers and functions together with the allied system of checks and balances ; (2) then there is an element of co-operation or co-ordination resulting from (*a*) a spirit of compromise and (*b*) a readiness to make concessions, without which government cannot be carried on smoothly and successfully, (*c*) the undisputed supremacy of parliament which has the ultimate power of turning out the ministry from office and (*d*) the wise restraint of parliament. With the development of the cabinet system, the cabinet became a co-ordinating instrument. The country is governed by the ministers, yet they are responsible to the electorate. The time at the disposal of the parliament is regulated, and the party in power is disciplined ; but, yet the ministers are sensitive to the opposition and to the public opinion outside the House. "Departments of state are controlled and required to implement cabinet policy, yet advice is readily taken from permanent civil servants. There is thus a free flow of ideas from many sources into the cabinet which has the responsibility of formulating a policy that is not only practical but also acceptable. On account of the skill with which this is done, the constitution bends but does not break, for government adapts itself quickly and quietly to changing events and circumstances."

Another outstanding feature of the British constitution is that it is characterised by unbroken continuity. It is an organic growth like the picture of a living person. It is a living organism which has in itself the principle of constant and continuous growth. It is the result of a practically unbroken development for nearly one thousand and four hundred years. The formal part of the constitution does not vary much from time to time, though the conventional or the organic or the working portions change. The form remains the same, but the substance changes, and thus the organism has gradually adapted itself to new and changing environments. Commenting on this feature of the British constitution, M. Emile Boutmy writes, "The English have left the different parts of the constitution just where the wave of history had deposited them ; they have not attempted to classify or complete them or to make a consistent and coherent whole." According to Masterman, the English constitution is a drift towards democracy rather than a progress, because there is no preconceived theory. "The Englishman distrusts theory." Professor Freeman lays particular emphasis on this continuity of English constitutional development and observes, "The continued national life of the people in spite of foreign conquests and internal revolutions has remained unbroken for one thousand and four hundred years. At no moment have Englishmen sat down to put together a wholly new constitution. Each step in our growth has been the natural consequence of some earlier step ; each change in our law and constitution has been, not the bringing in of any thing wholly new, but the development and improvement of something that was already old. Our progress has never wholly stopped since the coming of the Teutonic conquerors." The British constitution is the outcome of a prolonged process of

evolution. "It bears the imprint of many hands and can be compared to a rumbling structure to which successive owners have added wings and gables, porches and pillars without any system or symmetry." "It resembles an old family mansion to which each successive generation has added its own turret or side-wing without any effort to maintain the symmetry of the main structure. It is not a well-planned, clear-cut, four-square building with a single architectural plan."

Thus, the British constitution is characterised by the principle of both continuity and change, preservation and reform, conservation and correction. To keep a just balance between the old and the new is essential as a safeguard against the two fallacies that whatever is, is right, and whatever is, is wrong.

It is not the product of any political theory or political philosophy. This should not be taken to mean that the great English political philosophers such as John Locke or the great jurist like Blackstone did not influence the development of the British constitution. It is worth remembering that most English political thought or philosophy came after the event. For instance, the long struggle between King and Parliament in the seventeenth century regarding who should be supreme in the government of the country, King or Parliament, finally ended in a victory of the parliament, thanks to the Revolution of 1688. John Locke's two treatises on Civil government were published after this problem was settled.

Another noteworthy feature of the constitution is that it is characterised by the spirit of moderation. Even during times of revolution, the Englishmen are said to be proverbially conservative and the reformers try to prove that their new proposals were in reality nothing but restoration of the old institutions with the minimum modifications rendered necessary on account of the change in circumstances. With them precedents play a large part ; even when the institutions change tremendously, old forms are retained wherever possible. To quote Palgrave : "By far the greatest portion of the written or statute laws of England consist of the declaration, the reassertion, repetition, or the re-enactment of some older laws, either customary or written, with additions or modifications. The new building has been raised upon the old groundwork ; the institutions of one age have always been modelled and formed from those of the preceding." Edmund Burke, repudiating that the revolution of 1688 was not a revolution made or achieved, but a revolution averted, draws our pointed attention to the fact that the Englishman is always attached to the ancient institutions of Britain. He remarks, "The two principles of conservation and correction operated strongly at the two critical periods of her history, when England found herself without a king." The critical periods referred to are the Restoration of 1660 and the Revolution of 1688. Again he gives an estimate of the British national character as follows : "Thanks to our sullen resistance to innovation, thanks to the cold sluggishness of our national character, we still bear the stamp of our forefathers. We

have not lost the generosity and dignity of thinking of the fourteenth century ; nor as yet have we subtilised ourselves into savages. We are not the converts of Rousseau ; we are not the disciples of Voltaire ; Helvetius has made no progress amongst us. Atheists are not our preachers ; madmen are not our law-givers. We know that we have made no discoveries, and we think that no discoveries are to be made in morality ; nor many in the great principles of government nor in the ideas of liberty ....We fear God ; we look up with awe to kings ; with affection to parliament ; with duty to magistrates ; with reverence to priests ; and with respect to nobility." Again, speaking about how practical-minded the British are, he observes, "The people of England will not ape the fashion which they have never tried ; nor go back to those which they have found mischievous on trial." The reference is here to the fact that the republican form of government which was tried in England during the time of Cromwell proved to be more irresponsible and more autocratic than the period of the eleven years' tyranny of Charles I. The people put an and to the so-called Commonwealth government by restoring monarchy in the person of Charles II in 1660 and, from that time, the Englishmen developed a kind of hatred for republican tyranny. Whenever Englishmen introduced any change in the constitution which became necessary to remedy a real grievance, they took great care to preserve as much of the old institution as possible, in accordance with Burke's true tests of a good statesman which runs as follows : "A disposition to preserve and an ability to improve, taken together, would be my standard of a statesman."

The British constitution is the product of practical solutions of concrete problems as and when they arose. For instance, the problem of converting the feudal and decentralised government of the Anglo-Saxon and Norman kings into a strong centralised national government was achieved by making use of the power of the king and developing his household and his councils into working officers and agencies of government. Again, the problem of whether the parliament or the king should be the ultimate sovereign in the government of the country was solved, after a long struggle, in favour of the parliament after the Glorious Revolution of 1688. Further, the problem of making the parliament completely representative of the people was solved by the extension of the franchise by means of the Reform Acts of the nineteenth and twentieth centuries The problem of making the executive completely responsible to the legislature was solved by the establishment of the principle of ministerial responsibility to parliament, *i.e.*, to the majority party in the House of Commons. Thus, the constitution is to a large extent a mass of traditional ways of carrying on government. Customs and precedents are as fully important as the laws or charters or acts of parliament[1]

[1] It is generally said that the study of modern government must be treated either from a historical standpoint or from a practical angle. British government is so inextricably bound up with her history that it is almost impossible to ignore completely the historical development without becoming unintelligible.

England is a unitary state with a largely unwritten constitution which is the most flexible among the constitutions of the whole world. Though local bodies in England have been given certain powers for managing their local affairs, it is open to the parliament at any time, if it so choses, either to withdraw the powers or to reduce them. For the parliament is the supreme sovereign body and the powers enjoyed by the local governments are only delegated to them for the purpose of administrative convenience and efficiency. The units of local governments are entirely subordinate to the Central government, and they are not co ordinate as in any federal state even with regard to certain exclusively reserved items. On the other hand, in a federal state the constitution contains a list of exclusive powers given over to the units and the national government is prevented from encroaching upon the exclusive sphere of the states. England is thus a unitary state just like France. In other words, all powers of government, legislative, executive and judicial, are concentrated in the Central government.

The executive in England consists of the king, the cabinet ministers and the civil service.

The British monarchy is one of the most ancient and one of the oldest institutions in Europe dating from 829, the date of the accession of King Egbert (of Wessex). The monarchy is the most ancient secular institution in the whole of the United Kingdom. It is older than the British Parliament itself which had its origin in the thirteenth century ; it is older than the British courts of law which began in the twelfth century ; it is also older than the oldest of British universities *viz.*, Oxford (1167) and Cambridge (1209). The Papacy is the only existing institution in Europe which is older than the British monarchy.

The British monarchy is marked by an unbroken continuity from 829 over a period of about twelve centuries, except for a brief period of eleven years, *i.e.*, from 1649 to 1660, when England had the so-called Commonwealth government under Cromwell. The continued existence of the British monarchy has served not only as a source of inspiration but also as an indication of the continuity of British national life. It forms an example of the stability of political and social institutions. The history of the British monarchy has not been interrupted or even marred by anything like either the French Revolution of 1789 or the Russian Revolution of 1917. Even the Revolution of 1688 was a peaceful event and hence it is generally called the "Bloodless" or the Glorious Revolution. The reigning monarch, Queen Elizabeth II, is the eleventh in the royal line of succession from George I, the first Hanoverian king of England who became king by virtue of the Act of Settlement of 1701, his mother, Electress Sophia, having died one year before the death of Queen Anne. Thus the British monarchy has had a long, unbroken, continued existence in spite of deviations in the direct line of succession according to the hereditary principle on which it is founded. Queen Elizabeth II can justly and with pride claim to be a descendent of the Saxon King

Egbert who brought about the unification of all England under one monarch in 829.

The position of the king in the English constitution is rather anomalous. In theory, the king has a long list of formidable powers. But in reality the monarch has been deprived of all his real powers. Today, he has only dignity and prestige as well as influence by virtue of his position and status. He has practically no power. On account of this fact many people suggest the abolition of monarchy on the ground that (1) it has outlived its purpose ; (2) it is a costly luxury for a democratic pattern of society ; (3) on acccount of the king's circle of personal friends and companions being necessarily limited to the upper classes and particularly to the Conservatives or the Right Wing Conservatives, the king would interfere in politics in order to promote the interests of these classes ; (4) it is also a bulwark of the class system which is incompatible with democracy ; (5) it fosters and promotes an official institution for the effective, though unintended, encouragement of social snobbery ; and (6) it stands as an obstacle in the path of social equality and finally that it is one of the liabilities of British democracy.

The causes for the survival of British monarchy are many. In the first place, the British are essentially conservative by nature and a crown has a sentimental value to them. It gives them a rallying centre. It serves as a symbol of national unity and a focus for national patriotism. Monarchy is very deeply ingrained in the hearts and minds of Englishmen. It cannot be easily rooted out. For, except for a short period of about eleven years (1649-1660) when there was in England the so-called Commonwealth government under Cromwell, there has been a regular succession of kings and queens in England since England became united under one monarch in the person of Egbert of Essex. As pointed out by Jenks, the king supplies the vital element of personal interest in the proceedings of the government. It is far easier for the average man to realise a person than an institution. The vast mass of the people is really interested in the king as a person as is proved by the crowds that collect in the streets whenever there happens to be a chance of seeing him. He, therefore, supplies the personal and picturesque element which captures the popular imagination far more readily than constitutional arrangements which cannot be heard or seen.

In this age of materialism, when there is a temptation to apply too utilitarian and too rationalistic standards of judgment, we are apt to forget the immense importance of emotion in politics ; sentiment also is as important as practical utility and pure and simple reason. Emotions, feelings, loyalties, chivalries, patriotism, these are things that profoundly influence a man's conduct for good or bad. The man or the person who acts as a magnet to attract this world of unbought and uncalculated sentiment is doing an incalculable service to the country. So, it should not be forgotten that in politics, sentiment has its sphere and its victories are no less renowned

and no less noble than pure and simple reason and cold and practical utility. Royalty in Britain evokes a deep emotional affection and hence is popular.

British monarchy is not at all a conservative institution. On the contrary, it has been a changing and moving monarchy, changing its position and status to suit new conditions and circumstances. Thus it has helped and fostered a number of changes. For instance, it changed its position and status in the eighteenth century to suit the development of the cabinet system of government with a Prime Minister at the head. Again, in the nineteenth and twentieth centuries, the British monarchy joined hands with their subjects to bring about changes in other institutions. Thus, the British monarchy, far from being a conservative institution, acting as a citadel of reaction or a brake on the wheels of progress, has been a progressive institution with a liberal outlook.

Another remarkable feature about British monarchy is that it is neutral in politics. It stands outside the realm of party politics. The monarchy being a hereditary institution, the monarch can afford to keep himself above the turmoil of personal and partisan strife. Since the monarch is not obliged to anybody either for his very existence or continuance in power he has no personal ambition to gratify and, therefore, can easily afford to be a strict neutral in party politics. What is much more, he is also above suspicion. In fact, this is the price the monarch has to pay to entitle him to the allegiance of all his subjects irrespective of party divisions. The monarch is above the laws of the land ; the constitutional maxim runs thus "The king can do no wrong." He is irresponsible and cannot be arrested or taken to task in any ordinary court of law. His goods cannot be seized, and he has also immunity from the main taxes. At the beginning of every year, the monarch is voted a civil list for the expenses of the monarch and his family.

Professor Dicey, drawing pointed attention to the king being irresponsible cites an example. According to him even if the sovereign commits a crime like the shooting of the prime minister in one of his interviews there is no process known to law by which he can be brought to trial. Further, none can plead the orders of the monarch in defence or justification of any illegal action. The maxim that "the king can do no wrong" implies that some minister or other is responsible for any act done by the king or in the name of the king.

On account of the fact that the monarch is neutral in politics, he enjoys complete immunity from criticism and challenge and is above the risk of a rebellion or the threat of a revolution or even the danger of a dismissal. And it is as it should be, for the monarch is only the head of the state lending dignity and prestige to government, while the head of the government *i.e.*, the Prime Minister, is really carrying on the government. So, the person to be criticised or challenged or to be removed from power is the head of the govern-

ment who is liable to be replaced by another the moment he loses the confidence of the majority in the House of Commons.

The royal family is the centre and example for the whole of the social life of England. As the head of the British society, the monarch can exert great influence. The king, the queen and the members of the royal family are all in a position to set the social standards of the nation. They can contribute a lot to elevate public morality, improve social amenities, promote learning and enhance national pride and prestige. The patronage of the king and the queen is a great asset to any kind of charitable institution or fund. It is said that "tinsel becomes silver when touched by the king." It gives it a nation-wide appeal. His presence at ceremonies and important functions brings people of all parties together. Even his platitudes receive the greatest possible attention. The king thus serves as the national spokesman. He can also create or set up new and healthy standards in fashion. By his personal character, he can exercise a good or bad influence on society. The abdication of Edward VIII, in December 1936, is a proof positive of the fact that ministers are responsible even for the marriage of the king. The ministry, therefore, did not like to see the position and status of the British monarchy and the dignity and prestige of the country lowered by the spectacle of the sovereign marrying a twice-divorced lady, Wallis Simpson.

The king has lost all his real powers. He now enjoys only dignity and influence by virtue of his position and status. The monarch is the symbol of national unity. Monarchy personifies the state and provides a rallying point or focus for national patriotism. A person can be loyal to the monarch and yet be opposed to the Government of the day. For instance, when the World War I broke out in 1914, the motto was "Your king and country need you"—not the Liberal government of the day. Thus national feeling needs a rallying point, something fixed and stable in a world of lightning change, something which is free from the turmoil of personal and political partisanship. In England, this rallying point is found in the person of the king whose powers have been defined and regulated in the course of centuries, whereas in the U.S.A. it is found in the constitution drawn up at Philadelphia in which the powers of the government in general have been defined and regulated once and for all, subject to later amendments.

The king is also the symbol of imperial unity. He is the only connecting link between the various parts of the British empire. So far as the self-governing dominions are concerned, the British Parliament is no longer the Imperial Parliament but the parliament of the United Kingdom only. The Dominions today have complete independence in all matters of legislation as well as policy. The unity that now remains is one of sentiment only. They have their own parliaments and even their own distinctive flags ; occasionally, there might be some common economic interest ; but the primary

and the most fundamental thing is sentiment and that sentiment is strengthened by a common allegiance to the Throne. The Dominions cannot tolerate any kind of subordination to the United Kingdom. But, they can profess allegiance to the sovereign. The functions which the monarch performs in relation to the Dominions are practically negligible. The Dominions are kept together with the mother country by an idea and that idea is personified in the Sovereign. The Crown is thus the "golden link" that binds these vast and varied territories together. The concept of imperial unity needs a symbol and the monarch provides it. The monarch is now the symbol of commonwealth unity, particularly after India decided to become a republic while at the same time continuing to remain in the Commonwealth of nations. In accordance with the Declaration of the Commonwealth at the Prime Ministers' Conference of April 1949, the Government of India have accepted the king as the symbol of the free association of its independent member-nations and as such the Head of the Commonwealth.

If monarchy were abolished in England, some other substitute has to be found in its place. For it is impossible to conceive of a stable parliamentary system of government without a nominal or titular head whose tenure of office is beyond the fickleness of a parliament or a congress. His period of office must be long enough to assure stability to existing political institutions. So, if hereditary monarchy is to be abolished, there must be a substitute in the form of an elected president chosen either by the Parliament as in France or by the people as in the U.S.A. A nominal President as in France would not be a suitable substitute for a hereditary monarch. As pointed out by Dr. Jennings, "The advantage of constitutional monarchy is that the head of the state is free from party bias. A promoted politician cannot forget his past, and, even if he can, others cannot." The sovereign, unlike an elected President, has no party affinity. Therefore he is in a most favourable position to act impartially. What is even more important is that the people of the country really believe him to be impartial. A President with nominal powers like the French President would not command the same respect and prestige as the British king. Further, he might be under the constant but irresistible temptation to increase his powers by dubious means as was the case with President Millerand. If an elected President were given powers such as those vested in the President of the U.S.A., that would mean an end to the supremacy of the House of Commons and the Cabinet. In this connection it is worth quoting Munro : "When the titular chief executive has no power there is a good deal to be said for keeping the post hereditary."

Speaking on the value of British hereditary monarchy Banker observes as follows : "The British king is above the play of party. He does not owe his position to any act of election which may have been disputed between the different parties. A state needs something which has the quality of white light, and is free from the variegated colour of party. Hereditary monarchy supplies this some-

thing. He owes his position to the simple and indisputable fact of birth. He is pledged to nothing except the discharge of his special function. His descent from his predecessors brings memories of the past to ennoble the duties of the present ; and his children are the promise of a future which will be continuous with both. The ceremony with which he is surrounded, whatever may be its cost, repays the cost in a rich return of the political sentiments and emotions which nerve and sustain a community. It is good to have a cheap administration provided it is also efficient. It would not be good to have a cheap system of monarchy. Life has its pomps and solemnities ; and in politics, as well as in other matters, it is the better for having those pomps."

As the monarch is regularly informed and consulted by the Prime Minister who keeps him in constant touch with the deliberations of the parliament and the decisions of the cabinet, the course of policy and the conduct of negotiations—all these make a king a source of long time experience. Seated at the centre of affairs and enjoying the benefit of time, the monarch has an unrivalled opportunity for acquiring a general knowledge of affairs of state which enables him either to encourage or to warn the ministers who offer the advice which he is necessarily bound to accept. It is particularly in this sense that the king forms an active part of the working machinery of the government of Britain. To quote Banker : "A head of the state who enjoys a life office and enjoys it by hereditary right not only saves the state from the perturbations and paraphernalia of a periodical presidential election, but he can also give it the positive service of his accumulated knowledge, ripe experience and disinterested judgment of affairs."

As Sir Ivor Jennings observes, "On the one hand it is easy to exaggerate the influence of monarchy by adopting a legalistic attitude and emphasising the part played by the Crown in the theory of constitutional law. On the other hand, it is easy to minimise the royal function by stressing the great triology of cabinet, parliament and people. The truth lies somewhere in between, but it is not a truth easily demonstrated nor is it constant in its content."

Strictly speaking, the functions performed by the king are very limited. He has one and only one function of primary importance *viz.*, the selection of the Prime Minister. Parliamentary democracy requires a formal head of the state to serve as a permanent symbol of the community and a constant magnet for its loyalty who represents permanently and constantly the continuity of national life and unity of the nation. On the other hand, there is also the necessity for a head of the government to carry on the government and be responsible to the parliament. Since he is in charge of the day-to-day administration, he must be made liable to ultimate removal from power and supersession by another head the moment he loses the confidence and support of the parliament. Thus, constitutional government requires two important persons for performing

two totally different functions : the head of the state to act as a nominal head on the advice of the head of the government ; another to act as the head of the government to carry on the government subject to the control of public opinion as expressed through the representative assembly of the people *viz.*, the elected legislature. Thus, parliamentary democracy in any progressive modern state is a system of dualism necessitating the services of two different persons, (*i*) to act as the nominal or the formal head of the state, and (*ii*) the real chief executive to act as the head of the government.

It must be remembered that these two necessities require two persons and it is not advisable to entrust these two functions to one and the same person. In the interests of the stability of parliamentary government, it is necessary that the head of the state should be an independent non-partisan individual who can always rise to a higher level and a higher plane for the purpose of representing the unity and continuity of the state. On the other hand, if the head of the state should also be burdened with the conduct of the day-to-day administration, he cannot perform the function of the head of the state in a non-partisan capacity and, if he should identify himself with any one particular political party, he will be looked down upon by the other rival parties and treated with contempt, scorn and ridicule which is not at all conducive to the dignity, prestige and importance of the head of the state as the first citizen of the nation entitled to respect and esteem by all people alike, irrespective of political and other considerations. Therefore, even if the function of the formal head of the state is nominal acting as a symbol of the unity of the state, one should not be blind to the fact that he is nevertheless performing a high and valuable function.

Hence, it is foolish to grudge the cost involved in retaining the institution of hereditary monarchy in England ; for the ceremony, the splendour and the solemnities with which he is surrounded repay the cost in a rich return of the political sentiments, emotions and loyalties which nerve and sustain a community.

During the interval between the resignation of one government and the advent to power of another the monarch is the sole repository of all executive power ; it is his duty to decide as to who should be sent for to form the ministry ; though the king's field of choice in the selection of the Prime Minister has been very limited, still the right to call upon a particular leader or statesman to form the government exists and it has to be exercised only by the monarch. Thus the responsibility of taking the first step to form a new government after the resignation of one government, has to be discharged by the monarch in England. Of late, this duty has become almost automatic, for under normal circumstances the monarch cannot exercise his discretion regarding the choice of the Prime Minister. Thus, whenever as a result of a general election a party secures a majority, and that party has as an acknowledged leader, that leader must be called upon by the Sovereign to be the Prime Minister.

When the Labour party secures a majority, there can never be any doubt regarding the choice of the Prime Minister, for the party always insists on the right of the Labour members of parliament to choose their own leader. But, the Conservative party does not always follow this practice. Thus Mr. Baldwin became the leader of the Conservative party in 1923, Mr. Chamberlain in 1937, Mr. Churchill in 1940 and Mr. Eden in 1955 because they were Prime Ministers, though the formality of an election was gone through in each case, but it must be remembered that it was a mere formality expressing approval of the leader chosen by the monarch.

The King has also an opportunity for exercising his discretion, when no party has an absolute majority. When a Prime Minister retires, it is taken for granted or presumed that he will advise the sovereign regarding his successor. But there is no such obligation ; for instance, Queen Victoria did not ask the advice of Mr. Gladstone in 1894, when she choose Lord Rosebery. Again, Edward VII did not seem to have consulted Campbell-Bannerman though Mr. Asquith had been allowed to preside over cabinet meetings during Campbell-Bannerman's illness ; though it is not quite certain, it is presumed that Mr. Baldwin had been consulted by the sovereign regarding the choice of Mr. Chamberlain in 1937. In 1940, when a coalition government had to be formed, for the vigorous and successful prosecution of the war, the Labour party insisted on Mr. Churchill on the price of its joining a coalition. Though in certain cases the choice of the Prime Minister is clearly indicated by the political situation existing in the country, there are also situations when the sovereign can exercise his discretion in the selection of the Prime Minister. For instance, in 1923, when Bonar Law, the Conservative Prime Minister fell sick and died subsequently, and when there were two aspirants for the post, Lord Curzon, a member of the House of Lords, and only minister with long experience, and Baldwin, a member of the House of Commons who had only eight months' experience as minister, George V had a very difficult problem to solve, because the Labour Party formed the official Opposition and that party had no representation in the House of Lords. Therefore, after consulting a few Conservative statesmen, George V called upon Baldwin to form the cabinet. From that time onwards, the convention that the Prime Minister should be a member of the House of Commons has become a settled convention of the constitution. Similarly, on the resignation of Baldwin's government, as a result of a defeat in the House of Commons after a general election in 1924, George V had to decide whether he should entrust the premiership to Asquith as the leader of the Liberals, or to Ramsay MacDonald, as the leader of the Labour party or to some one else who might probably succeed in forming a coalition. Ultimately, he sent for Ramsay MacDonald, who had the support of only one-third of the members of the House. Again, in 1931, when the Labour government which had no majority resigned, and the country was faced with an economic and financial crisis, a general election was out of the question altogether. So, the king sent for MacDonald to form a coalition government. Thus,

the monarch has a right of personal selection only in the unusual event of some confusion among the members of other parties or in the event of another election, in which no party secures an absolute majority.

Though such situations do not occur very frequently they reveal the nature and extent of the importance of the function of selecting the Prime Minister. The monarch is in a far better and more favourable position than any one else, because he keeps himself in close touch with the government. Further, he has a knowledge of the leaders of other political parties. Since he is a neutral in politics, he can form a disinterested judgment of the state of affairs and decide on the choice of the Prime Minister in the interest of the nation at large. Sometimes, even monarchs have their own prejudices; for instance, Queen Victoria was not a strict neutral. She was not only interfering in the affairs of the state, but intriguing against Mr. Gladstone. But, at any rate, this much is certain, that the monarch is less partisan than active and interested politicians.

As a monarch is above all parties, he can be depended upon to act as an impartial umpire in the great game of party politics. He can render useful and timely services as an impartial arbitrator, an invaluable intermediary and a tactful conciliator. The monarch can act as a mediator or peacemaker between warring political parties, as well as between the two Houses of Parliament. For instance, it is said that Queen Victoria's mediations were very helpful in settling the disputes between the two Houses of Parliament over the Reform Bill of 1884. Edward VII and George V, carried on this mediatory work quite successfully. Whenever there was opposition between the two Houses of Parliament and it was likely to lead to a deadlock, the king could act as a mediator and thus help them to reach a settlement. Only he should take care that his interference is neither too early nor too late. George V is given the credit of having brought about the settlement of the Irish question. Again, he took great pains to settle the dispute between Asquith and Lloyd George which ultimately led to the resignation of Asquith. As stated earlier, the National Government of 1931 with MacDonald as the Prime Minister was formed at his instance after a crisis.

In foreign affairs, and in diplomacy, the king played a useful role till recently because of his royal connections. In foreign affairs the monarchy can play a very useful and significant role by virtue of its royal office and dignity. Since foreign affairs generally have a more or less steady course, the experience of the monarch is likely to be of great value in this field. For, since he holds office for life, he is in fact something like a permanent civil servant with unrivalled opportunities for acquiring a knowledge of things as well as of men such as no civil servant immersed in the routine of a great office, and no diplomat touching affairs only at a single point, ever has or can acquire.

Further, it is in this field that his knowledge, experience and influence would be felt particularly. He is in a better position to offer informal advice by way of uttering a note of warning or a word of caution or encouragement based on his experience and tact in foreign affairs. Apart from offering practical advice to the Prime Minister, on the side of form and ceremony also, the monarch can render very good service in foreign affairs. For instance, the monarch is not a solitary and secluded individual confined to his own country. His visits to other countries with his queen may be not only acts of courtesy but important acts of policy and valuable services to the cause of peace. During times of peace, the monarch visits the Dominions and other states. During times of war, he visits and inspects the armed forces in the field which serves as a source of immense inspiration and helps them to rally together and to sustain the people with courage and fortitude in the face of common dangers. Again, the monarch receives and entertains not only the heads of other states but also the ambassadors, ministers and agents of other foreign countries. Thus, he serves as a general host and a centre of general hospitality. As Barker points out, "This is a function which can be discharged with a particular grace and a peculiar dignity only by a monarch trained to his office from youth and imbued by birth as well as upbringing with all the formalities and courtesies which it requires." Thus, the king can play a useful role in affairs.

The principles and practice of cabinet government in Britain may be thus enumerated :

(1) *The absence of the Sovereign.* The British monarch does not attend or preside over the meetings of the cabinet which is presided over by the Prime Minister. This practice dates from the accession of George I, the first Hanoverian king to succeed to the English throne by virtue of the Act of Settlement of 1701. George I was a German and he did not know the English language ; further, he was on the wrong side of fifty and he did not want to take the trouble of knowing the English language and the English system of government. But as he became king, largely on account of the support of the Whigs, and as Walpole was then the leader of the Whig party, he allowed the government to be carried on by him, and, from that time, Walpole presided over the meetings of the cabinet and established a number of good conventions and traditions for the smooth working of the cabinet system of government. Thus it was not an act of parliament, but a sheer accident *viz.*, the accession of a foreigner to the English throne in 1714, who was a stranger to English language and English system of government that excluded the soveregin from cabinet meetings, and gave England the office of a Prime Minister. This is a very important factor in the working of cabinet government, for the absence of the sovereign from cabinet meetings secures for him complete irresponsibility for the actions of the ministers and it is only quite in fitting with the political tradition that the "king can do no wrong". On the other hand, it makes the ministers completely responsible for anything done by them in the name of the sovereign.

(2) *The close relation between the Cabinet and the Parliamentary majority in the House of Commons.* The constitution of England is based not on the theory of the separation of powers but on the principle of concentration and co-ordination of powers and functions in the hands of the cabinet which is only a committee of the parliament consisting of the prominent leaders of the majority party in the House of Commons. The general election decides which party will have a majority in the House of Commons. The leader of the party is asked by the sovereign to form the cabinet and the members of the cabinet are required to be members of one or the other house of parliament. Thus, in England, the government is carried on by the cabinet consisting of the leaders of the majority party in the House of Commons who are all members of parliament and who are responsible individually and collectively to the House of Commons. The cabinet can continue in power only so long as it commands the confidence of the House of Commons. The moment it loses its confidence, it must either resign or make an appeal to the country by dissolving the House of Commons. Thus, the executive in England is a dependent on the legislature not only for its existence but also for its continuance in power. Further, it is not independent of the legislature. But, this is not the case in U.S.A. where the President who is the real chief executive and who is completely independent and on a par with the legislature. Once elected by the people, he enjoys his four year term of office even when the majority party in the legislature belongs to his rival party. Neither the President nor his cabinet members are members of the American Congress nor can they be turned out of office by the Congress.

(3) The members of the cabinet must be members of one and the same political party. If it consists of members of different political parties with different policies, principles and programmes, there is bound to be difference of opinion among the members of the cabinet which will lead to weakness, inefficiency and needless delay not only with regard to legislation but also in administration. The weakness of a government run by a coalition consisting of more than one political party has been amply demonstrated by the history of French ministries. In England, for the sake of unity, efficiency, and promptness in arriving at decisions as well as executing them, they have established a convention that during peace time the government should be run by only one party, *i.e.*, the majority party in the House of Commons, subject to the constant gaze and criticism of the Opposition. Only during times of national emergencies, a national government is formed in order to co-ordinate all-party effort to meet the emergency. The continued existence of a regular official opposition called Her Majesty's Opposition whose leader is paid out of public funds is a remarkable feature of the British cabinet system of government.

(4) The collective responsibility of the ministers to the House of Commons is of two kinds, one legal and the other political. The legal responsibility means that every minister is responsible for any act

done by him and can be taken to task in a court of law. The political responsibility means that every minister, whether he is a member of the cabinet or not, is answerable individually to the House of Commons for all his public acts. One or all the ministers can at any time be sent out of office by a censorious House of Commons. In this connection, it is worthwhile quoting Lord Morley: "As a general rule, every important piece of departmental policy is taken to commit the entire cabinet, and its members stand or fall together. The Chancellor of the Exchequer may be driven from office by a bad despatch from the Foreign Office, and an excellent Home Secretary may suffer for the blunders of a stupid Minister of War. The Cabinet is a unit—a unit as regards the sovereign and a unit as regards the legislature. Its views are laid before the sovereign and before the parliament as if they were the views of one man. It gives its advice as a single whole both in the royal closet and in the hereditary and representative chamber .. ..The first mark of the Cabinet, as that institution is now understood, is united and indivisible responsibility."

The cabinet is said to be collectively responsible for the policy of the government, irrespective of the fact whether it had been placed before the cabinet or not. This takes for granted that maladministration should be ascribed not to any one particular minister but to the cabinet as a whole. But, in practice, the principle of collective responsibility is not at all carried to its logical extremity, for it is open to the cabinet whether they shall accept or disown the decision of a particular minister. If the cabinet should decide to disown the decision, then that particular minister alone shall resign; but, on the other hand, if the cabinet should choose to accept the decision as its own, the cabinet as a whole rallies to his support and stands or falls with him.

Ministerial responsibility to the House of Commons is an effective method of ensuring that the government is carried on in accordance with popular opinion.

(5) Within the cabinet, the Prime Minister is supreme and all the other ministers must be subordinate to him. It is the Prime Minister that forms the cabinet, selects individual ministers, distributes the portfolios to them, holds meetings of the cabinet and finally holds himself responsible for the general policy of the government as a whole. He is generally consulted by the other ministers on important affairs connected with their own departments. Disputes between ministers are also settled by the Prime Minister. The cabinet secretariat is also under the control of the Prime Minister. He is the leader of the party both in the parliament and in the country at large. He is indirectly the nominee of the electorate. He is in a special degree the confidential advisor of the Crown and the principal and, at times, the only channel of communication between the Crown and the Cabinet. The power of the Prime Minister is really great, particularly when he has a safe

and substantial majority in the House of Commons. The Prime Minister exercises considerable majority in the House of Commons. He exercises considerable powers of supervision and control over the work of all his colleagues. He acts somewhat like an umpire, in case there are differences of opinion among his colleagues. But, when there is a serious disagreement between the Prime Minister on the one hand and one of his colleagues on the other, that minister is forced to resign. Thus, in the Cabinet, though all the members stand on an equal footing, speak with equal voice, and, on rare occasions, when the cabinet determines its course of action by the votes of its members, his vote counts only as one of theirs, yet the Prime Minister occupies a position of unchallenged supremacy which is one of exceptional dignity and authority.

(6) Cabinet meetings are in an exceptional degree, informal and secret. Differences of opinion among the members of the cabinet should not be revealed to the public. The need for the secrecy is particularly great if compromises on some of the burning questions have to be arrived at by adopting a policy of give and take. Lack of secrecy would offer vulnerable points to the Opposition. Further, it is necessary to maintain the highest degree of secrecy particularly in negotiations with foreign countries, budget discussions, as well as home policy. It is highly improper on the part of the ministers to refer either in parliament or elsewhere to discussions in the cabinet and the stand taken by each member. Such secrecy is essential even with regard to the select committees of parliament.

(7) Legally speaking, the cabinet is a committee of the Privy Council. The cabinet as such is unknown to the law of the land. The position of the cabinet in the English constitution is still informal and ambiguous. It meets in secret, usually once a week during the session and less frequently out of session of Parliament at No. 10, Downing Street, the official residence of the Prime Minister ; but it may meet more frequently during times of any national emergency It is a body of varying size regulated by usage and not by law. It consists of men of different ranks, titles and offices. It is, in one sense, a private meeting of select Privy Councillors. Most acts of the crown are declared to be, "by and with the consent of the Privy Council". Thus, the cabinet as such is unknown to the law of the land except for a reference to it in the Ministers of the Crown Act 1937 which expressly mentions the cabinet and provides for a schedule of salaries for its members as well as for the Leader of the Opposition, but the Act says nothing either about the functions, the powers or the responsibilities of the cabinet ; they rest as before upon long customs and usages of the realm. Commenting on this feature, Munro says, "Among the governmental institutions of the modern world, the British cabinet is perhaps the best example of what usage can build up." Thus, accidental in its origin with its powers and functions still undefined and indefinable, the English cabinet system has nevertheless become the standard and the model of responsible government in its parliamentary form. It

is interesting in this connection to remember that, though cabinet government of the British type has been copied by a number of countries including India, none of the imitations with which a major part of the world is covered exactly reproduces the original.

(8) The cabinet controls the House of Commons and is in turn being controlled by the House of Commons. Thus the intertwining of two responsibilities is the essence of the cabinet system of government. On the one hand the House of Commons, theoretically at any rate, has the power to bring about the fall of the cabinet. On the other hand, the cabinet can bring about the dissolution of the House of Commons. Therefore, both must work in co-ordination and in harmony with each other without creating any deadlock between the executive on the one hand and the legislature on the other.

The powers and functions of the cabinet may be thus summarised :

Among the peculiar contributions of the British constitution to political theory and practice, the most important and most closely imitated by other countries, is the system of responsible government through the medium of a cabinet. The cabinet is a real executive in Great Britain, while the nominal executive head is the British monarch. It is generally defined as a body of royal advisors selected by the Prime Minister in the name of the Crown with the tacit approval of the majority in the House of Commons. Bagehot describes it as "a hyphen that joins, a buckle that fastens, the executive part of the state with the legislative part." Its importance in the general machinery of government can be realised by the following quotations regarding its position, powers and functions. Ramsay Muir speaks of it as the steering wheel of the ship of state. Munro refers to it as "a committee of parliament chosen to rule the nation." "It is the pivot on which the whole political machinery turns". A. L. Lowell calls it (*a*) the key stone of the political arch, (*b*) "the motive power of all political action," (*c*) "the driving and steering force" To quote Ogg, "the Cabinet is as truly the executive in Britain as the President in U.S.A. A.V. Dicey observes : "While every act of state is done in the name of the Crown, the real executive government of England is the Cabinet." W.E. Gladstone describes it thus : "The cabinet is the threefold hinge that connects together for action the King, the Lords, and the Commons. It is perhaps the most curious formation in the political world of modern times, not for its dignity but for its subtlety, its elasticity, its many-sided diversity of power. It lives and acts simply by understanding without a single line of written law or constitution to determine its relations to the monarch or to parliament or to the nation ; or the relations of its members to one another, or to their head."

According to Marriott, "The Cabinet and the Prime Minister are, of all political English institutions, the most characteristic. Taken together they are the pivot round which the whole political machine

practically revolves ; yet neither in terms known to the law.[1]

The cabinet consists of the political heads of all the great departments together with a few holders of ancient and honorific offices like the Lord President of the Council, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster who have practically no departmental duties. It is a supreme ruling body in the British system of government and so long as it commands the unstinted support of a stable majority in the House of Commons it determines the national policy with practically irresponsible power. The Cabinet may be described as a committee of parliament in one sense. It is also a body of administrative heads, each in charge of some great department of state or other. The cabinet members have to perform two important functions. In the first place, they are the executive heads of the departments of government. Secondly, collectively they formulate the policy of the government as a whole. They have to decide what laws are necessary, what important works should be given top priority and what should be the general principle governing policy. Then what should be the general principle governing state policy. They have to decide such important questions as the declaration of war, the conclusion of peace and offer unanimous advice to the monarch. They are also responsible for the exercise of their powers and functions to the parliament, that is, to the House of Commons. The cabinet ministers practically combine in their own hands legislative as well as executive functions. This is made possible on account of the fact that all ministers must be members of one or the other house of parliament. Further, the British constitution, as pointed out earlier, is based not on the doctrine of the separation of powers as in the constitution of the U. S. A. But it is based on the principle of concentration of powers and functions in the hands of the executive. In fact, the splendid success of British democracy may be ascribed, among other factors, to the close union, or the complete fusion of the executive and legislative powers.

The cabinet is the heart of the working machinery of the government to all intents and purpose. The "King in Council" means the Cabinet. It is only within the cabinet that great and important national policies are discussed and formulated before they are taken up for discussion in the parliament. The cabinet decides all major issues.

The cabinet enjoys considerable initiative in legislation on account of a number of factors such as ever-increasing state activities, and the enormous pressure of work. The time at the disposal of the House of Commons is so limited that practically all its time is devoted to consideration of government bills. Though it is true that private members may also introduce bills it is equally certain that

[1] The Webbs strike a totally different note when they assert that "the government of Great Britain is in fact carried on not by the Cabinet, nor even by the individual ministers, but by the civil service."

such bills have practically no chance of receiving serious attention in the parliament, unless those bills are actually supported by the cabinet. The cabinet members, with the help of their colleagues and subordinates, formulate, introduce, explain and urge the adoption of legislative measures upon all kinds of subjects. On account of the close union that exists between the executive and the legislature, the control of the cabinet over the legislature is greater in England than anywhere else in the world. It prepares the speech from the throne which sets forth the state of national affairs in various fields and a programme of legislative work, at the opening of every parliamentary session.

The powers of the cabinet are at all times limited and controlled by the principle of ministerial responsibility. The responsibility of the ministers to the House of Commons is not a mere formality. All decisions of importance are taken by the ministers and if, anything goes wrong they will be held to account ; which means that one or all the ministers can at any time be compelled to go out of office by a displeased or a censorial House of Commons. Though this is not a written law of the constitution as in France or as in the new constitution of India, it is interesting to note that no convention of the constitution is more firmly established or more cheerfully obeyed than this by which a defeated ministry resigns office. Ministerial responsibility is of two kinds, one Legal and the other Political. The legal responsibility means that every act of the Crown must be countersigned by at least one minister responsible to the House of Commons. If the act committed is illegal the minister will be held responsible by the court of law. Thus the cabinet is responsible for every act it does in the name of the crown. Political responsibility forms an integral part of the very nature of parliamentary government. It means that all the ministers, whether they are members of the cabinet or not, are responsible to the House of Commons for all their public statements of policy and act. As has been pointed out earlier, ministerial responsibility to the House of Commons is no mere gesture or friction but a serious affair though it is not always so simple as it looks, for the only way of enforcing the responsibility is through the Prime Minister.

According to the report of the Machinery of Government Committee (of 1918), the main functions of the cabinet are as follows :—

(1) The final determination of the policy to be submitted to parliament.

(2) The supreme control of the national executive in accordance with the policy prescribed by parliament.

(3) The continuous co-ordination and determination of the activities of the several departments of state.

The first function involves (*a*) the preparation and approval of a programme of legislation for each session of parliament. Government bills have a preferential claim for consideration by parliament

where they are introduced, explained and defended by cabinet ministers. The cabinet thus supplies an effective leadership in parliamentary legislation. Its importance in legislation has become so great that a recent writer remarks : "It is the Cabinet that legislates with the advice and consent of parliament", (*b*) it prepares and approves of the "King's Speech", (*c*) it determines its attitude to private member's bills to be introduced in parliament, (*d*) it examines and discusses the annual budget before its formal introduction in parliament.

The second function involves the determination of how the executive authority vested in the Crown—with regard to appointments, foreign affairs etc.,—shall be exercised.

The third function involves a general supervision, control and co-ordination of the work of the several departments of government.

For the due performance of these functions the following conditions seem to be essential or at least desirable : (1) The cabinet should be small in number preferably 10 or 12. (2) It should meet frequently. (3) It should be supplied in the most convenient form with all the information and material necessary to enable it to arrive at quick decisions. (4) It should make it a point to consult personally all the ministers whose work is likely to be affected by its decisions. (5) It should have a systematic method—a ready-reckoner method of knowing that its decisions are effectively carried out by the several departments concerned.

From 1916, there has been a cabinet secretariat to help the cabinet in the discharge of its powers and functions. Its duties are as follows :—

(1) To circulate the memoranda and other documents received for the business of the cabinet and its various committees, (2) to prepare under the direction of the Prime Minister the agenda of the cabinet, and under the direction of the Chairman, the agenda of a cabinet committee, (3) to issue summons of meetings of the cabinet and its committees, (4) to take down and circulate the decisions of the cabinet and its committees, and to prepare the reports of cabinet committees, (5) to keep, subject to the instruction of the cabinet, the cabinet papers and conclusions.

There is nothing in the English constitution more characteristically and typically English than the position of the Prime Minister. The Prime Minister is practically the political ruler of England and holds the key position in government and politics of the United Kingdom ; but yet the Prime Minister was unknown to the constitution until 1905 and to the law of the country till 1937. The term 'Prime Minister' as such was not mentioned in any official document until 1878 when for the first time in the history of England, in the Treaty of Berlin, Lord Beaconsfield was referred to as First Lord of Her Majesty's Treasury and Prime Minister of England. In 1905, Balfour at the time of his own resignation advised Edward VII to

give the Prime Minister precedence immediately after the Archbishop of York. Accordingly a Royal Proclamation was issued in December 1905 which assigned to the Prime Minister a place in the order of precedence and the place assigned to him was next to the Archbishop of York *i.e.*, apart from the members of the Royal family he takes the fourth place. It must be noted that, even here, he is preceded by the Lord Chancellor, a member of his cabinet and hence one of his political subordinates. Technically, even today, there is no such office as that of the Prime Minister, he has no salary as Prime Minister, no statutory duties as Prime Minister, and though he holds a most important place in the constitutional hierarchy and wields all the powers of parliament as well as all the powers of the Crown, his place is not widely recognised by the laws of his own country. He has no formal title or prerogative as Prime Minister. This is a strange paradox—only one illustration of the many minor anomalies of the British constitution.

The Ministers of the Crown Act of 1937 recognised his position and status and provided for him a salary of £10,000 per year as Prime Minister and First Lord of the Treasury. His unique position and importance in the constitution are indicated by the grant of a pension of £2,000 per year to all ex-Prime Ministers. Commenting on the unique position and powers of the British Prime Minister, Gladstone remarks, "Nowhere in the wide world does so great a substance cast so small a shadow ; nowhere is there a man who has so much power with so little to show for it in the way of formal title or prerogative."

The widest extension of the franchise and the prestige and importance conferred upon the office of the Prime Minister by the Victorian statesmen like Gladstone and Disraeli have given him a status almost equal to that of the President of the U.S.A.

The Prime Minister is the chief of the real executive. He is also the leader of the majority party in the House of Commons and, therefore, for all practical purposes the leader of the House of Commons. He guides the cabinet and parliament in legislation as well as in administration. He has considerable patronage at his disposal. All the important appointments, both in church and state, are made on his personal recommendation. He is ultimately responsible for the conferment of all titles and honours. He appoints the two Archbishops, the Archbishop of Canterbury and that of York, Bishops, Deans and some of the canons of the church of England. Some of the very important professors in the Universities of Oxford and Cambridge are also appointed by him, also ambassadors to foreign countries, governors-general, governors of colonies and the dominions, though in all these matters the sovereign may sometimes exercise some influence.

The Prime Minister also appoints the ministers and assigns to them their portfolios. He can also transfer them from one portfolio to another and within certain limits, he can also determine the size of

the cabinet. For instance, the marginal offices like the Chancellor of the Dutchy of Lancaster, the First Commissioner of Works, the Post Master General etc., are sometimes included in the cabinet and some times excluded at the discretion of the Prime Minister. Again, he has the power, if he so desires, to reduce the strength of the cabinet by entrusting two or even more departments to one and the same person.

The Prime Minister is the chairman of the cabinet. He is also the co-ordinating head between the different departments of state. He presides over cabinet meetings. Many important affairs of the state should be brought to his notice by the ministers before they reach the stage of discussion in the cabinet. Differences between the ministers or between different departments must be submitted to him. He settles quarrels between ministers or between departments. He can also compel his colleagues to resign. He must see that the cabinet presents a solid united front to the parliament and the world. He is the leader of the ministry and he has to bear the brunt of attacks made against the government. His authority over his colleagues is vast and must be not only disciplinary but also moral, for he cannot afford to be very harsh or unfair or tactless in his dealings with his colleagues. No important matter can be transacted in the cabinet without his advice. He has a right to expect to be consulted regarding appointments to the highest offices in the permanent civil service. Foreign affairs, particularly, come under his supervision. He is the principal link between the cabinet and the Crown. To quote Lowell : "He is both an official channel of communication with the Crown and an informal mediator." He is also in a special degree the confidential advisor of the Crown. Just as the cabinet stands between the sovereign on the one hand and the parliament on the other and is bound to be loyal to both so also the Prime Minister stands between his colleagues on the one hand and the sovereign on the other and is bound to be loyal to both.

He represents the cabinet as a whole in the House of Commons. He makes important general statements regarding government measures to be introduced, the time required for discussion and the need for such measures, while other ministers have to confine themselves to defending the appropriations of their departments in addition to answering questions regarding the conduct of their departments. Generally, the ministers do not take an active interest in the discussion of subjects belonging to other departments of state. The Prime Minister, on the other hand, must keep a careful watch on the progress of all government bills. Further, the House looks to him for a clarification on all general questions as well as on the most important and intricate of government measures. The Prime Minister must be a member of the House of Commons for purposes of maintaining administrative efficiency as well as controlling effectively his cabinet as well as the House of Commons. That the Prime Minister should be a member of the House of Commons has become a settled convention of the constitution since 1923 when Baldwin was summoned by George V in preference to Lord Curzon.

The Prime Minister is the acknowledged leader of his party and is looked upon as the ultimate oracle on all matters of critical issue.

The individual and collective functions of the cabinet ministers are performed under his direction, supervision and control. He exercises a general overall supervision over the work of all his ministerial colleagues. Whenever there is irreconcilable disagreement between the Prime Minister on the one hand and one of his ministers on the other, that minister is compelled to resign. But, it must also be remembered that the Prime Minister cannot afford to ride roughshod over his colleagues. He must remember that he is only their leader and not their boss as is the President of the U.S.A. He must take great care to carry them with him ; otherwise, differences in the cabinet would soon result in a division of his party majority, for his colleagues on the cabinet have their own friends in the House of Commons and that factor ought not to be lost sight of by any Prime Minister who wants to be in power for long. Notwithstanding these limitations, his power is practically vast and absolute so long as he continues as Prime Minister. It is on his advice that the prerogative powers of the Crown are exercised. Further, he has an ultimate weapon in his hand—*i.e* , he can tender his resignation which means the resignation of his cabinet.

The Prime Minister is always over-worked and always pressed for time. In spite of the fact that he can demand the assistance of both laymen as well as experts in the conduct of the government, he has to devote a large part of his time to receiving visitors, conferring with individual ministers, visiting and submitting reports of the decision of the cabinet to the Sovereign in addition to his holding cabinet meetings and carrying on or supervising endless correspondence. On the floor of the House of Commons, he must take a prominent part in all the discussions, answer difficult questions on behalf of the other ministers as well, defend the general policy of the government in all matters and also decide points of technical procedure.

It is usual to describe the British Prime Minister as *Primus inter pares*, first among equals (Lord Morley). But, today, such a designation of the Prime Minister would be too modest and hence an inaccurate description of his status and powers. Jennings gives a more correct and appropriate description. "He is not merely *Primus inter pares* ; he is not even as Harcourt said *'Inter stellas luna minores'* ; he is rather a sun round which planets revolve."

"The office of the Prime Minister is necessarily what the holder choses to make it and what the other ministers allow him to make of it. His powers are large but he has to secure the collaboration of his colleagues." (Sir Ivor Jennings). Strong and able Prime Ministers have dominated the cabinet, while weak Prime Ministers were content merely to carry on the government. Thus, differences in the personalities of different Prime Ministers introduce an element of doubt and uncertainty in making a broad general statement about the exact nature of the office of the Prime Minister. For, it it well

known that a statement which would be completely true of a Churchill in war-time cannot be necessarily true of an Attlee in peace time. Nevertheless all recent developments, both before and after the First World War, have tended to increase enormously the authority and prestige of the Prime Minister. He is the chief of the cabinet and not the master like the American President.

Speaking of the importance of the Prime Minister Ramsay Muir says that the cabinet "is the steering wheel of the ship of State but the steersman is the Prime Minister." In the words of Lord Morley the Prime Minister is the "key-stone of the Cabinet arch". The phrase is as precise as it is picturesque. The key-stone keeps the arch together; it depends for its position on the arch. He forms the cabinet, keeps the team together, shuffles his pack as he pleases and can compel the resignation of any or all his colleagues.

The position of the Prime Minister depends largely on his personality. To quote Professor Chase : "In recent years the position of the Prime Minister has tended to become quasi-presidential ; chosen by popular acclaim, he holds his office independent, or largely so, of his colleagues or even of parliament." Commenting on the position and power of the Prime Minister in the general machinery of the government, Sidney Low observes, "Backed by a stable and substantial majority in parliament, his power is greater than that of the German Emperor or the American President for he can alter the laws, he can impose taxation or repeal it, and he can direct all the forces of his state. The one condition is that he must keep his majority—the outward and concrete expression of the fact that the nation is not willing to revoke the plenary commission with which it has clothed him."

On account of the close relation that exists between the cabinet and the majority party in the House of Commons and also the ever-increasing power of the cabinet over the House, the Prime Minister has tended to become autocratic ; but as Lowell points out, it is however an autocracy exerted with the utmost publicity under a constant fire of criticism, and tempered by the force of public opinion, the risk of a want of confidence and the prospects of the next general election." The Prime Minister has his finger always on the House of Commons and particularly on the party majority therein ; he is ever on the watch for expressions of public opinion outside the House ; he is even more on the alert to watch the criticism of his government by the Leader of the Opposition. In fact, the government is carried on by the Prime Minister in close collaboration with the Leader of the Opposition ; and hence the humorous remark of G. B. Shaw that "the English Prime Minister knows the Leader of the Opposition better than he does his own wife."

Comparing the position of the British Prime Minister with the American President, Professor Laski observes, "It would be too much to say that the position of a modern Prime Minister has

approximated to that of an American President ; for the career of Mr. Asquith, Mr. Lloyd George, and Mr. Ramsay Macdonald all illustrate the fact that his authority is a matter of influence in the context of party structure and not of defined powers legally conferred. But it would, I think, on experience be true to say that the stronger the hold of a Prime Minister upon his cabinet, the better is the system likely to work."

The British Prime Minister still is not the boss of his Cabinet in the sense in which the American President is in his cabinet. The President's cabinet consists of his nominees whose advice in matters of the state is not at all binding on the President. It is not even necessary that the President should consult them. They are appointed by the President and are liable to be turned out of office by the President at any time. Neither their advice nor their votes can deter the President in his conduct of government. We are all only too familiar with the saying of President Lincoln at the end of every cabinet meeting : "Noes, seven, ayes, one : the ayes have it," and his successors in office have retained this power. There is no obligation on the part of the President even to consult his cabinet on important affairs of state. Most of the members of his cabinet are comparatively obscure men and they are not in a position to challenge the President by withdrawing their support from him. But this is not the case with the British Prime Minister whose cabinet colleagues are some of the most important leaders of the party and, therefore, he cannot easily afford to ignore theiradvice. But, in spite of this, the Prime Minister enjoys a position of almost unchallenged supremacy so long as he is Prime Minister. All of us can easily understand why an elderly statesman of the wisdom, experience, and personality of a Churchill should dominate his cabinet ; but what is more important is that, long before the war, even a less able man like Chamberlain also enjoyed similar supremacy over his cabinet colleagues. Though his ways of dealing with the affairs of the world were not as masterly and forceful as those of Mr. Churchill, he exercised almost dictatorial powers over his colleagues and on many occasions he took action without even consulting his cabinet ; and even ministers who seriously disagreed with him like Mr. Anthony Eden. A minister, Duff-Cooper, could resign without shaking his authority. Likewise Chamberlain's two predecessors in office, Baldwin and MacDonald, exercised more or less similar powers and authority over their cabinet colleagues. Though Mr. Attlee was frequently criticised for not giving a stronger and bolder lead, yet in his own sincere, unassuming and unostentatious way he was not only decisive but, on certain occasions, even ruthless, a fact which indicates that the office itself creates a certain pattern of behaviour for even the most docile and quiet personality.

Among the many factors that have contributed to the enormous power and strength of the Prime Minister the following, among others, are noteworthy :—

Apart from the personality of the Prime Minister, the preoccupations of the cabinet members with the duties and problems of their own particular departments are such as to make them leave the determination of general policy to the Prime Minister and his advisers. Besides, his exalted position as a party leader gives a Prime Minister a prestige and an influence far greater than that of any other member in the cabinet. For his leadership of the party enable him to control effectively not only the party organisation but also its funds—weapons of decisive power against any possible challenge of his position and authority. Further, the prestige of the Prime Minister and that of the party are so closely linked together that the party men will not tolerate any attack on the Prime Minister and his policy. Again, as the parliament is demonstrating increasing symptoms of its weakness to control the cabinet, and as it is largely made up of conflicting interests, people are more and more looking up to the Prime Minister for leadership. He is so big and high enough in popular esteem that he need not court any man's favour and cannot even be easily bribed to espouse a particular cause. He is politically so strong that he can afford to think of the public interest only at the expense of private and selfish interests. This does not mean that he can ignore very easily the most powerful of the special interests. It only means that, comparatively speaking, he is in a stronger and more independent position to resist a selfish minority than is the case with an ordinary member of parliament. Further, his own position encourages him to do so because when he thinks of the next general election, he must think not in terms of particular or special interests, or constituencies, but in terms of securing a majority of votes in the country as a whole. Too much of support to any special vested interest like the Trade unions in the case of a Labour Prime Minister or to big business in the case of a Conservative Prime Minister is certain to estrange the independent voters to such an extent as to lose the elections.

Comparatively speaking, the American President may be said to have two advantages over the British Prime Minister. In the first place, the former has a fixed term of office—four years—and once chosen, however unpopular he may be either with the Congress or even with the majority of the voters, he cannot be removed from power except by the process of impeachment (which has not so far succeeded). But, the British Prime Minister has no such fixed term of office. In theory, at any rate, the House of Commons has the power to compel him to resign or to hold fresh elections whenever it wants. Secondly, the President is the supreme lord of the cabinet and can act even against its unanimous advice. But, on the other hand, the British Prime Minister must carry the members of his cabinet with him as it consists of some of the most important leaders of the party with whom he has to share his power, and dissensions in the cabinet will soon spread to the House of Commons and result in a division of his party. But, in practice, the British Prime Minister who has the support of a stable and substantial majority is practically as certain

of his five-year term of office as the American President is of his four-year term. Again, even within the cabinet, a Prime Minister with a strong personality is in a position to dominate it to a considerable extent. On the other hand, the British Prime Minister has certain advantages over the American President in his control of the Parliament. The adoption of the party system of government, the rigidity and tightness of the party discipline and his power to bring about the dissolution of a recalcitrant parliament are some of the most powerful weapons in the hands of the Prime Minister with which there is nothing to be compared in the U.S.A. The American Congress, which is on a par with the President, is under no obligation to accept the President's recommendation regarding any legislative programme with the result that it is likely either to be rejected or at least to be modified. The main weapons of the American President as against a recalcitrant congress are (1) his right to appeal to public opinion, (2) a judicious distribution of the patronage at his disposal, and (3) the exercise of the limited power of veto vested in him. In practice, these weapons cannot carry him far, for his right to appeal to the public will succeed only under certain limited circumstances and no President can weary the public with too many repeated appeals or it may even so fail to respond. The patronage at his disposal is of a limited extent and would be completely exhausted within a few months of the advent of a new government. The veto power is negative in character and cannot be of great help in pushing forward any positive programme of legislation. By way of contrast, the British Prime Minister's control of parliament is almost absolute and unchallengeable. Once the cabinet is behind him, the House of Commons, where he has a party majority, will carry out his programme.

This should not be taken to mean that the British Prime Minister can become a dictator ; for, the Prime Minister holds his power only for a period of time, be it long or short, and except during times of national crisis there must be fresh, and free general elections at least once in five years when the people are given an opportunity to turn out his party from power. Free election is unknown to a dictatorship. Further, no dictator tolerates the existence of any opposition to his regime. But, on the other hand, the Prime Minister carries on the government subject to the most searching and vigorous criticism of his government by the opposition both in the parliament and in the press. Further, there is another restraining and controlling influence over the Prime Minister—the spirit of the British constitution. Born, and bred in England and educated in British political traditions according to one of which a defeated ministry voluntarily resigns office, he cannot assume the attitude of a dictator. Though the Prime Minister is endowed with such a plenitude of power as no other constitutional ruler in the world possesses, as Finer points out, "he is not a free agent. He is no Caesar ; he is not an unchallengeable oracle : his views are not dooms."

Comparing and contrasting the powers of the American President with those of the British Prime Minister, Laski observes, "The Presi-

dent of the U.S.A. is both more and less than a king ; he is also both more and less than a Prime Minister."

Technically cabinet ministers are appointed by the Sovereign ; but practically they are selected by the Prime Minister. But, the Prime Minister is not entirely free in his choice. A few ministers "who select themselves" are some of the outstanding leaders of the party whose claims can never be overlooked. Further, ex-members of the past ministries of the same political party have a preferential claim to appointment. Young men of the party who have shown outstanding capacity must not be neglected. Different wings of the party should be represented. Disaffected elements must be placated to maintain party solidarity. As far as possible, representation must be given to the various parts of the United Kingdom. Again it is a statutory provision that at least four secretaries of state must be from the House of Lords. He must also see that the men chosen must be good debaters and would also form a team which will work together harmoniously. Commenting on the difficulties of the Prime Minister in the choice of his colleagues, Disraeli considered it "a work of great time, great labour, and great responsibility." There are only a limited number of posts, but an almost unlimited number of eager candidates. Lowell remarks that the Prime Minister is "like a child trying to construct a figure out of blocks, which are too numerous for the purpose and which are not of shapes or sizes to fit perfectly together."

Regarding distribution of portfolios, he is somewhat freer. In deciding this, he is guided by the candidate's experience, his equipment, his capacity to defend the work of his department in parliament, and his skill as an administrator. Still, even here, personal preferences play an important part. In the second Labour Government, formed in 1929, by Ramsay MacDonald, much against the will, he had to give the portfolio of foreign affairs to Henderson.

It is now a well-established tradition that the Prime Minister never consults his cabinet about filling a vacancy. The part of the Sovereign has also become limited only to a formal approval.

The cabinet is unknown to the law. Ministers hold office only as members of the Privy Council which is legally the advisory body of the Crown. But, in actual practice, the Privy Council has become only an ornamental body and has no real importance.

It is in the neighbourhood of the Whitehall that the administrative departments are housed and it is there that one can find the ministers, the under secretaries, the deputy secretaries, assistant secretaries, and other subordinate officials, attending to their daily work. At the head of the departments are ministers. These departmental heads are selected by the Prime Minister and they remain in office so long as the ministry has the confidence of the House of Commons. The principal work of the heads of the departments is to formulate policies and co-ordinate the work of various sections of the

departments. The internal departmental work is carried on by the permanent staff of the civil service personnel. Among the departments the Treasury maintains effective control over all the other departments. The Chancellor of the Exchequer, who is next in importance to the Prime Minister, is the finance minister of the realm. Although he is the virtual head of the Treasury, the Treasury is considered to be under the control of the Treasury Board, which consists of five members, including the Chancellor of the Exchequer. In practice, the board never meets and the Chancellor of the Exchequer alone looks after finance. It is he who prepares the annual budget and presents it to the House of Commons. Hence, he is usually a member of the House of Commons and a man capable of defending the fiscal policy of the government in the House.

The Lord Chancellor presides over the House of Lords and is usually a member of that body. Since the House of Lords is the highest court in England, he occupies the highest position in the judicial system of England. It is he who recommends to the Crown the appointment of the judges of the higher courts. The judges of the lower courts are appointed by him. He looks after the appointments to the church also and hence his is the only office still reserved for Protestants.

The Secretary of State for Home Affairs, known as the Home Secretary, is responsible for the maintenance of peace and order, the enforcement of the factory laws, the maintenance of electoral rolls and the control of the police. It is he who receives petitions for pardon and advises the crown in the exercise of its pardoning powers.

The Secretary of State for Foreign Affairs is in charge of the Foreign Office. He advises the Crown in its dealings with foreign Powers, and recommends the appointment of diplomatic personnel. He negotiates treaties and contracts with foreign Powers. The Secretary of State for War is responsible for the maintenance of the land forces. He is advised and helped by the War Council, consisting of six members. The First Lord of the Admiralty, who is the president of the board of "Lord Commissioners for executing the Office of Lord High Admiral", controls the naval forces. The Secretary of State for Air is the head of the Air Council, which maintains control over the Royal Air Force. The Minister of Defence co-ordinates the activities of the Admiralty, the War Office and the Air Ministry. He is usually accorded a place in the cabinet. The Secretary of State for Commonwealth Relations is in charge of the relations between the British Government and the Dominions. Likewise, the Secretary of State for the Colonies is the head of the Colonial office which deals with the colonies. Similarly, the Secretary of State for Scotland looks after the relations with Scotland. The Board of Trade, whose function is to regulate industry and commerce, never meets and the President of the Board actually carries on the work of the board. The function of the Ministry of Education is to supervise and co-ordinate the

educational administration carried out on the lines laid by the education committees of the counties and county-boroughs, to inspect the subsidised schools, and to fix standards for the personnel to be employed in the schools. The Ministry of Works is responsible for the maintenance of public buildings, supply of building materials, land drainage, and the custody of ancient and historic monuments. The Ministry of Agriculture and Fisheries is in charge of the production of food-stuffs and fishing interests. The Ministry of Labour helps to maintain friendly relations between employers and workers and looks after the enforcement of labour laws relating to wages and health conditions in the factories etc. The Ministry of Health controls health insurance and supervises the local bodies in respect of sanitation, water supply etc. The Ministry of National Insurance looks after old age, and other social insurance schemes.

The Ministry of Local Government and Housing supervises local government and the problem of housing. The Ministry of transport looks after all forms of transport including civil aviation.

The Prime Minister usually occupies the post of the First Lord of the Treasury ; but, sometimes he may be in charge of other departments. For example, Winston Churchill was Minister of Defence in 1951. Certain others, like the Lord President of the Council, Lord Privy Seal, and Chancellor of the Duchy of Lancaster have no departmental duties. These posts are intended for ministers, whose inclusion in the cabinet is desired, but who are either unwilling or unable to subject themselves to departmental routine.

Routine work of administration is looked after by a highly efficient civil service, the members of which are recruited by competitive examinations and who enjoy security of tenure. The civil servants can be classified into four categories. The first class is termed the Administrative Class. The recruitment to this class is by competitive examination of a very high standard, in which only candidates who have taken honours degree can hope to pass. The candidates for this service must be between the ages of twenty-one and twenty-four at the time of recruitment. Candidates, selected after oral and written examinations, are usually employed in the lowest cadre of the administrative service. Though recruitment is mainly by competitive examinations, promotions from the lower cadre is also allowed to a lesser extent. There are about 4,000 persons in this cadre at present.

Next in importance to the Administrative Class is the Executive Class. Recruitment to this service is also by competitive examinations, but of higher secondary school level. The candidates for this service must be between the ages of eighteen and nineteen at the time of recruitment. Here, also, a small number is recruited from the ranks below. The members of this class are employed in the specialised branches of the service and occupy executive jobs.

Next in rank is the clerical class. This consists of both men and women, who are recruited at the ages of sixteen and seventeen.

Competitive examinations of the standard of the intermediate stage of a secondary school are held for recruitment to this class. Members of this class are usually placed in the higher grades of clerical service, which have supervisory control over the rank below.

The lowest in rank is the Clerical Assistants Class. This class consists entirely of persons recruited at the ages of sixteen and seventeen. For this class also examinations are held, which require higher elementary school education.

Promotions from one class to another are allowed on consideration of merit and experience. But, such promotions are lesser in the case of the first three classes. Apart from the above-mentioned categories, there are number of services adapted to special purposes, like revenue collection. In addition there are labour classes, which are employed in the government workshops and dockyards. The members of the civil service are forbidden to take part in elections and political controversies. The civil service in England is distinguished by competence, integrity and devotion to public interest.

The Parliament of England consists of the House of Lords and the House of Commons. The parliament is housed in the Palace of Westminster, on the left bank of the Thames. The Parliament of England was not formerly as it is today. In the past, there were old communities of the countryside organized in the units called shires and communities of townsmen organized in the units called boroughs. Parliament is the product of the gradual growth of the concentration of elected representatives of the old communities of the shires and the boroughs round the Great Council of the king which included his councillors, the great barons and the bishops. The bicameral nature of the British Parliament is the result of a happy accident according to which the representatives of the shires and the boroughs met together in the body called the House of Commons, and the barons and bishops formed the House of Lords. The king's council thus became separate from the Parliament. This bicameral system began in the fourteenth century. It was only gradually that Parliament gained its present powers. It gradually came to be established that all taxes should be approved by the Commons. Likewise, in legislation, it was recognized that all laws should get the consent of Parliament. All these powers were established before the Revolution of 1688. After this, control of Parliament over the administration came to be established by the growth of the cabinet system of government—a system which first grew up in England.

Historically, the House of Lords is the oldest legislative house of the world. In the words of Strong, it is "the only purely hereditary upper house of any importance left." The members belong to six different categories or groups.

1. *Princes of the Royal blood.* —The male members of the royal family who are of age and who conform to the specifications of relationship have a place in the House. Members belonging to this

group are only a few and they grace the House by their presence very rarely and do not take part in the deliberations.

2. *Hereditary Peers.*—About nine-tenths of the total number of the members belong to this category. The term "Peers" means equals and the term was applied at the end of fourteenth century to those who received a personal writ of summons to the Parliament. In course of time, it became established that a baron who received a writ of summons was not only entitled to receive similar writs for subsequent Parliaments but his heirs also should receive such summons after him. Peers are created by the Sovereign on the advice of the cabinet. Usually, men of eminence and distinction in various walks of life are made peers. Since the House of Lords consists mostly of the hereditary peers it is also referred to as the House of Peers. But, in reality it is not so, because not all peers are members of the House and non-peers like the bishops are members of the House. Further, peeresses have no seat in the House.

3. *Representative Peers of Scotland.*—By the Act of Union of 1707, provision was made for election of a certain number of Scottish peers to the House of Lords. According to that arrangement, the Scottish peers still elect sixteen out of their number at the beginning of each Parliament to represent them in the House of Lords.

4. *Irish Representative Peers.*—By the Act of Union of 1801 with Ireland, it was agreed that Irish peers should be represented in the House of Lords by twenty-eight peers elected for life. After the establishment of the Irish Free State in 1922, no election was held and hence the number of Irish peers is reaching the vanishing point.

5. *Lords of Appeal.*—The House of Lords is also a court of appeal for cases in England. The judicial functions of the House of Lords made necessary the presence of able jurists in the House. Therefore, nine lords of appeal are appointed for life to attend to the judicial business of the House. They are also paid an annual salary unlike other members of the House.

6. *Lords Spiritual.*—The two archbishops of Centerbury and York and twenty-four other bishops also have seats in the House and they represent the Higher Clergy. Writs of summons are sent to twenty-four bishops on the consideration of the length of time they have been in office and these lose their seats in the House when they resign or go out of office.

Minors, aliens, bankrupts and persons undergoing a sentence on a charge of felony or treason and women are not eligible to be members of the House. The Lord Chancellor, who is a member of the cabinet, presides over the deliberations of the House. Three members constitute a quorum ; but, at least, thirty members must be present to pass a legislative measure. The House of Lords is summoned and prorogued together with the House of Commons. As in the case of the House of Commons there are committees in the House of Lords.

The position of the Lord Chancellor is un like that of the Speaker of the House of Commons. He has no power to call members to order and he can participate in debates. The procedure in the House is also simpler than in the House of Commons. There are no elaborate rules as there. Voting is as in the House of Commons through lobbies on either side of the House. But, in divisions, the voting is not as Ayes and Noes, but as Content and Not Content.

The Chamber of the House is of the same width and height as that of the House of Commons, but slightly longer to make room for the Throne from which the Sovereign opens the Parliament. During debates, privy councillors, who are commoners, can sit on the steps of the Throne. As non-peers, they cannot sit in the House ; but, the Throne is held to be technically outside the House. This attendance of privy councillors in the House is a relic of the position when Parliament originated as an outgrowth of the King's Council and furnishes an opportunity to cabinet ministers who were commoners to be present (because cabinet ministers are all privy councillors), though they cannot take part in the proceedings of the House, because they are not peers. In front of the Throne is the Woolsack where the Lord Chancellor sits. At the end of the Chamber is the Bar behind which the Commons assemble when Parliament is opened.

In 1952, there were 857 members of the House. Three were peers of the blood royal, twenty-one Dukes, twenty-seven Marquises, 135 Earls, 96 Viscounts and 528 Barons. There are sixteen Scottish Representative Peers and 5 Irish Representative Peers. It may be noted that, at the time of the Revolution of 1688, there were only 150 peers. The other members of the House are the two Archbishops and twenty-four bishops.

In legislation, the powers of the House of Lords were till 1911 theoretically equal to those of the House of Commons. Money bills could, however, originate only in the House of Commons. But, the House of Lords, in theory at least, had the power of even rejecting them, though this power was practically never exercised. In reality, very few ordinary bills originate in the Upper House. In 1909, the House of Lords, dominated by the Conservative party, obstructed the passage of a financial bill which was brought in by the Liberal government and which was displeasing to the Conservatives. Thereupon, the Liberal government appealed to the country by holding elections on this issue and gained the verdict in its favour. The lords now gave way.

This incident had the effect of strengthening the stand taken by the Liberal and Labour parties that the powers of the House of Lords should be reduced. This led to the passing of the Parliament Act of 1911. The Act laid down that all money bills passed by the Commons and sent to the Lords at least one month before the end of the session should become law, even if not passed by the Lords. It was also laid down that the decision of the Speaker of the House of Commons, whether the bill is a money bill or not, should be final.

Regarding ordinary bills, the Act declared that if a bill was passed by the Commons in three successive sessions and sent up to the Lords at least one month before the close of the session and was in each case rejected by the Lords, it should nevertheless become an Act, provided at least two years had elapsed between the date of the second reading of such a bill in the first of these sessions and the third reading of the bill in the third of the sessions. The Act also reduced the duration of the House of Commons from seven years as it was before to five years, so as to allow public opinion to express itself more rapidly in elections.

Though no change was made in the composition of the Lords, the preamble of the Act promised further legislation about a reconstitution of the House on a popular basis. Meanwhile, the Act practically deprived the Lords of all power in respect of money bills and allowed it only a suspensory veto for two years in respect of other bills.

The causes for the demand for the reform of the Lords are many. (1) The predominantly hereditary character of the membership of the House is considered a political anachronism. As Dr. Appadorai remarks, "The idea of a hereditary legislator is as absurd as the idea of a hereditary poet laureate or a hereditary mathematician." (2) The House is not representative of all the elements in the society. The majority consists of big landlords and businessmen. These representatives of vested interests, naturally, are ardent supporters of the Conservative Party. Thus, the House represents only one party. This fact also makes it an obstacle to progressive legislation. (3) A large majority of the members never attend the House except on ceremonial occasions It is also said that most of the members lack not only interest but ability. (4) Some members of the Labour Party felt that the suspensory veto still left to the Lords might prevent the passing of a necessary law, since many changes within the period of two years might prevent the enactment of a law. Hence, some wanted the total abolition of the House.

Various proposals for the reform of the House have been put forward. But no proposal has so far secured general agreement. The most important of these proposals was put forward in the conference on the reform of the second chamber in 1918 presided over by Lord Bryce. The Bryce Report favoured a second chamber on the following grounds : (1) The examination and revision of bills coming from the House of Commons have become very important, since the House of Commons has become overworked and is obliged to act under special rules limiting debate. (2) Bills dealing with subjects of a practically non-controversial character can be discussed and put in a well-considered shape before being submitted to the Commons. (3) The interposition of so much delay in the passing of a bill as may be needed to enable the opinion of the people to be adequately expressed on it might be necessary, if such bills affect the fundamentals of the constitution, introduce new principles of legislation or

raise issues whereon the opinion of the country may appear to be almost divided. (4) Full and free discussion of important questions like those of foreign policy could be conducted in an assembly, whose debates and discussions do not involve the fate of the executive government.

The Bryce Committee proposed a plan by which the number of the House of Lords could be reduced to 327, of which a major portion would be elected by the members of the House of Commons grouped in 13 electoral colleges. But this plan, like other proposals, came to nothing, as there was no general agreement.

After the Labour government of Attlee came to power in 1945, it desired to restrict the delaying power of the Lords. So, in 1947 an amendment of the Parliament Act was introduced. This Act was passed into law against the opposition of the Lords with the necessary interval of two years in 1949. The Act laid down that bills passed by the House of Commons in two successive sessions, instead of three, shall become law, even if opposed by the Lords. The period the Lords could delay the passage of a bill was limited to one year, instead of two.

Bagehot remarked that "a leisured legislature is extremely useful even if not quite necessary". The House of Lords still performs some useful service in the revision of bills and debates on government policy. Since ex-cabinet ministers, ex-judges, ex-governors, and distinguished men like great jurists and scholars and men distinguished in various activities like writers and scientists are usually made peers, there are many experienced and talented men in the House. Work in the House is very largely done by a few men of real ability, interest and experience. Munro comments that the "low-voltage" peers stay away from the House and the House "possesses its fair quota of brains and eminence". It must not be forgotten that many of the members of the House like ex-cabinet ministers had come with experience as members of the House of Commons in the past. In fact, the standard of debate in the Lords is far higher than that of the Commons. Moreover, the tendency of the Lords has been nowadays not to obstruct the passage of measures favoured by public opinion. In Munro's judgment, the House of Lords "appears to be doing its job fairly well."

The House of Commons is directly elected by the people. As a result of various acts of reform which began in the nineteenth century in the matter of franchise, Britain which was the most corrupt became completely democratic. The dominance of the landed interests and other forms of wealth and privilege has been definitely ended. Now all persons, male or female, over the age of twenty-one are qualified to vote, provided they have resided in the constituency for three months. There is no property qualification. The only persons excluded from the vote are minors below 21, aliens unless naturalised, lunatics, peers and those convicted of treason or felony. Local authorities prepare the register of voters and the poll is taken on a

single day. There is no residential qualification for candidates. Hence, unlike the U. S. A., localism which is an objectionable feature is avoided. Election in the constituencies is by a simple majority in the constituency, and methods like proportional representation are not used. The term of the House of Commons is five years ; but it may be dissolved earlier by the crown. Members of the House were paid salaries for the first time in 1911, when they were given £400 a year. This salary was increased to £600 in 1937 and £1,000 in 1946.

Before 1944, there was no permanent machinery to adjust representation to inevitable changes in population. In 1944, boundary commissions were appointed to survey the constituencies in England, Wales, Scotland and North Ireland. As a result of their work, the number of the seats was increased from 615 to 625. The boundary commissions were made permanent, and authorised to make changes in the constituencies according to changes in population. Now, in 1955, there are 630 members in the House of Commons. Each constituency has roughly 50,000 to 60,000 voters and the total number of voters in the country are about thirty-five millions. To prevent frivolous nominations, candidates are required to deposit £50 which would be forfeited if they fail to poll an eighth of the total poll in the constituency.

After election, the new House meets in the palace of Westminster. In 1834, the palace was almost entirely destroyed by fire except for some parts like the Westminster Hall which is now used mainly for great public occasions. New Houses of Parliament were built later and occupied in 1852. Again, during the Second World War, the chamber of the House of Commons was destroyed. A new chamber was built and was occupied by the House of Commons in 1950. It is noteworthy that the new chamber is built in the same style as the old. Unlike the chamber in the Continent, which is semi-circular, the chamber here is rectangular. On the right of the Speaker sit members belonging to the party of the government and the members of the opposition sit on his left. The solemn proceeding of the opening of a Parliament after election with its ancient ceremony shows that Parliament is still in theory unicameral, as it was when it originated. The Commons, headed by the Speaker, assemble behind the bar of the House of Lords where the sovereign, sitting on the throne, opens the session of Parliament. After the Parliament is opened, the House elects its Speaker who conducts the proceedings of the House. During the last 50 years, the Speakership has become completely removed from party politics. The Speaker ensures the orderly conduct of business, decides points of order, and safeguards the rights of the minorities in debates. Jennings in his *Parliament* shows that his actual authority is even greater than his powers. He does not vote except in the case of a tie.

When the House meets, the Speaker calls the names of the members who have given notices of questions. These ask questions to which the ministers reply. Any member, if allowed by the Speaker, can ask supplementary questions. If the member is

dissatisfied, he may give notice of a vote of censure or a vote of no-confidence against the government. Further, on certain days, proceedings are interrupted to debate motions for adjournments, when members can debate particular issues for half an hour. Even though the government may have a party majority, these opportunities for criticism tend to make government careful and serve as protection against inefficient, arbitrary or extravagant administration.

Money bills originate in the House of Commons. The estimates prepared by the cabinet with regard to expenditure are considered by the House of Commons sitting as the Committee of Supply. The House cannot add to the expenditure. Hence, the members are free from usual local pressure from constituencies. The proposals of the government for taxation are again considered by the House sitting as the Committee of Ways and Means. After these two committees have done their work, the Money Bill based on this work is presented to Parliament and is passed into law like other bills. This procedure has been criticised on the ground that the whole House is too unwieldy for a detailed examination of the budget. So the government is able to have its own way. Contrast the other extreme in the U.S.A. where small committees of the Congress which are independent of the government mutilate the financial proposals of the government.

Ordinary bills may be introduced by the government or by private members, but, owing to the fact that government has to get through volumes of fresh legislation, the tendency for the government is to absorb more and more the time of the House, and so the chances for enactment of a private member's bill are very remote. The first reading of the bill is the mere introduction of the bill. Then, on an appointed day, the principle of the bill is discussed in the second reading. If carried,[1] the bill may be sent to the appropriate standing committee, a select committee of the house, a committee of the whole House or a joint committee of both the Houses. When the House goes into committee the Speaker leaves the chair and the chairman takes his place. All details of the bill are considered by the committee which makes its report to the House. Then follows the third reading, when the bill has to be accepted or rejected as a whole. A bill passed by the House of Commons goes to the Lords, where a similar procedure is followed. Then, it receives the Royal assent and becomes an act. It has been criticised that, owing to heavy work which comes before the House of Commons, much work of importance is disposed of with no adequate discussion. Possibilities of discussion are also limited by changes in the rules of procedure made in the nineteenth century. Thus, the time allowed for discussion may be cut down by a motion for the closure of the debate. There is also the "guillotine"

[1] Division lobbies are on either side of the House. Members voting 'Aye' go through the right lobby and those voting 'No' go through the left lobby. At the further end of each lobby, a pair of members called Tellers count them.

according to which the time for discussing various parts of the measure is rigidly allotted. But, as against these criticisms, we must bear in mind that, before the government introduces the measure, it itself conducts preliminary discussions outside Parliament with the interests which are vitally concerned in the matter. From 1935, the time of discussion of the different parts of the bill is fixed, not by the government, but by a committee of all parties in the House which prepares an agreed time table. Another important development has been the growth of delegated legislation. Parliament simply frames general rules in the bill and confers on the executive department concerned the power to issue regulations concerning details. The grant of such powers including legislative and judicial powers to the executive has been strongly criticised by writers like Lord Hewart and Allen. But, it is widely recognised now that the grant of such powers is inevitable. Modern legislation is too technical to be properly understood by the average members of Parliament. The over-worked Parliament also has very little time to consider the details of proposed legislation. In all countries, this practice has grown along with an increase in the functions of the state.

As we saw already, there were two big parties in the nineteenth century, the Conservative and the Liberal parties. In the twentieth century, there grew up the Labour party which has gradually displaced the Liberal party in importance. So, even now, there are essentially two political parties, the Conservative and the Labour parties. Unlike as in the Continent, stable government is assured in England, because the real choice is only between two great political parties. In foreign policy, ever since the Second World War, there is mostly agreement between the parties ; but, with regard to internal policy, there are profound differences. The Conservatives favour free enterprise and are against any further nationalisation. The Labour party which favours socialism, wants to nationalise all the means of production, distribution and exchange. The parties have central organizations in London and local branches in all the constituencies. Party programmes are national rather than local. There is continuous party propaganda going on because there is a large marginal body of voters who owe permanent allegiance to any political party, and who must therefore be wooed. There is a well-organized party discipline, though it is not so rigid as in the U.S.A. Most members owe their seats to the party "machine" which selects the candidates and accumulates funds to fight election campaigns. Annual party conferences adopt resolutions which are binding on all party-men. In the Labour party, this rigidity—in doctrine and discipline has been carried to the highest extent. The Communist party is not important.

The fourth election, since the end of the Second World War, was conducted in May, 1955, and the Conservatives were returned to power. The party position in the new House of Commons is as follows : the Conservatives have secured 345 seats. Labour has

secured 277 seats, the Liberal party has secured only 6 seats and the other groups, 2 seats.

Parliament, in its age-long evolution, has developed certain rights called Privileges of Parliament which must be carefully distinguished from its powers. These privileges, meant to secure the undisturbed and efficient conduct of its work, include the right of freedom of speech inside the House, freedom from arrest in civil actions during sessions of Parliament, the right to decide disputed elections in the case of the House of Commons and of disputed peerages in the case of the House of Lords, the right of expelling or suspending members and the right to punish for contempt of the House.

The House of Commons is still, theoretically at any rate, very powerful. It can exert its influence over all departments of state. It still serves as an ultimate bulwark of public liberty and a splendid example of an elected assembly of a great and worthy people. But, the theoretical supremacy of the House of Commons is now limited by a number of factors, chief among them being the growth and development of rival jurisdictions. Its own creatures or servants have become its masters ; for instance, the cabinet, which is a mere creature of the House of Commons and over which it has unlimited powers of control of various kinds, has now become more powerful than the House of Commons. This is one of the recent trends in constitutional government of the parliamentary type.

Causes for this dictatorship of the cabinet are as follows : The most important cause is the power of the Prime Minister to recommend to the Sovereign the dissolution of the House of Commons when the cabinet is defeated in the House. It is common knowledge to students of politics that, whenever the ministry is defeated in the House of Commons, it has two alternatives : one is to resign and the other is to recommend to the Sovereign the dissolution of the House of Commons, if the cabinet should feel that it has lost the support, of the House of Commons. The exercise of this power will result in the dissolution of the parliament and the holding of a fresh general election. If the cabinet fails to secure a majority in its favour, it resigns. Though the cabinet is only an authoritative committee of the majority party in the House of Commons, the members of the majority party have a stake in the continuance of the cabinet in power. Largely on account of the development of the party system and on account of the adoption of strict and rigid rules of party discipline, the members of the party in power are bound to support the cabinet irrespective of the fact whether the policy of the ministry is acceptable to it or not. Thus to quote Bagehot : "The cabinet is a creature (of the House of Commons) but unlike other creatures it has the power of destroying its creators", for, as Sir Ivor Jennings says, "a member of Parliament however insignificant likes his seat or else he would not be there." A dissolution of the House of Commons is a most unwelcome thing

to a member of Parliament, for that means that (*a*) he loses his membership of Parliament which entitles him to a salary of £1000 (per annum) apart from a number of other rights, privileges and the influence that he wields as a member of parliament both inside the House, in the country at large and particularly in his own constituency. (*b*) He has to face a general election whose expenses have become phenomenally great on account of the wide extension of the franchise. (*c*) He has also to take enormous pains in contacting his voters, for in England, every voter values his vote and really expects his vote to be canvassed in most cases directly by the candidate and in the case of men of outstanding leadership, at least through the party organization, which means he has to spend a few anxious days and nights in connection with his electioneering campaign. (*d*) Further, there is no certainty of his re-election. As if these are not enough, by voting against his ministry, which will result in the defeat of his party, he has nothing to gain whatsoever. On the contrary, he will be helping enormously the Opposition with which he has nothing in common, which he detests more than his own party, which he does not like to get into power and from which he cannot hope to get any favour whatsoever. On account of all these factors, the House of Commons, instead of controlling the cabinet, allows itself to be effectively controlled by the cabinet. It is interesting to remember in this connection that since 1895 no government with a stable majority was turned out of office by the vote of the House of Commons.

Another reason for the autocracy of British Cabinet is the initiative and leadership that the cabinet enjoys not only in legislation, whether ordinary, or financial, but also in administration. It is the cabinet that prepares all legislative measures and presents them to the legislature for the purpose of securing their approval. Though it is a fact that private members of parliament can also prepare and introduce bills for legislation, it is an undoubted fact that a preponderant majority of bills passed by the legislature are bills, either introduced or sponsored by the ministry, or such private members' bills as had secured the support and sympathy of the ministry. It is equally true that certain days are set apart for the discussion of private members' bills, but they have no chance of success, unless they are actively supported by the government of the day. It is said that roughly about eighty-five to ninety per cent of the laws passed by the parliament are government bills, so much so that it can be said that it is the cabinet that legislates with the sanction of the House of Commons. Thus, though the main function of the cabinet is executive, the cabinet enjoys effective initiative, leadership and dominance not only in legislation but also in administration. Cabinet ministers guide and control the work of the parliament in both Houses to a large extent almost unparalleled either in the U.S.A., with its Presidential form of government, or in France, Belgium and other countries which have adopted the cabinet form of government. This is made considerably easier on account of the fact that cabinet ministers must be members of one or the other of

the two Houses of Parliament. If at the time of appointment a cabinet minister is not already a member of parliament he must become one within a period of six months. The parliament acts as a kind of registering office for the decisions and decrees of the cabinet. The time at the disposal of the House of Commons is so limited and the work that has to be transacted is so much, particularly on account of the ever-increasing state intervention, and on account of the dependence of the people at large on state interference, support, regulation, control and planning that practically all the time of the House of Commons is devoted to a consideration of government measures. What the ministers do is to decide on their legislative programme and to formulate policies and afterwards go to the Parliament for securing its approval.

In financial matters also, the cabinet has established practically its monopoly of power. Private members can only suggest or move for the reduction of the expenditure proposed by the ministry. This monopoly is made easier on account of the well-established rule that the cabinet alone has the power either to propose new taxation or expenditure. This was not the case at any rate in the Third French Republic where it was open to any deputy to suggest new items of expenditure. On account of this, as well as on account of the committee system, the French ministry had no control even over the annual budget and when the money needed for the government was not voted the government could not continue in power and hence the frequent ministerial crises. But in Britain, the cabinet enjoys an unchallenged power in financial matters. Though it is open to the private members to criticise the budget proposals, their work is really confined to criticism and no cut motion, real or token, can succeed against a ministry that has a stable majority in the House of Commons. It is said that it is easier for the camel to enter the needle's eye than for a member of parliament to introduce an adjournment motion which is in the nature of a censure.

Further, the rules of procedure for conducting the business of the House of Commons are most highly favourable only to the cabinet at the expense of private members. Generally speaking, a major part of the time, about seven-eighths of the total time of the House, is devoted to a consideration of government business. The government enjoys many advantages over private members. According to Standing Order 1 (8), the session for the day can be prolonged to get through the government business. It is also open to the House to decide after debate, on a resolution proposed by a minister, to take the whole or some part of the time allotted for a discussion of private member's bill. Standing Order 47 (4) declares that government bills must have precedence over private members' bills in all but one of the committees.

Apart from these standing orders and rules of procedure which are favourable to the government at the expense of the private members, there are other more direct and effective ways by which endless or lengthy discussions on government measures on the part

of the private members can be terminated, such as simple closure, a guillotine closure or kangaroo closure. Thus the rules of procedure are such as to facilitate the autocracy of the cabinet.

Commenting on the growing predominance of the cabinet in the general machinery of the government A. B. Keith observes, "The Commons.....has ceased to control cabinets and it dares not reject or substantially amend government measures. The adoption of rules of procedure which more and more abridge the right of private members to secure discussion on legislation and the absorption of the time of the Commons by the government have contributed to the subordination of the Commons to the cabinet."

On account of the lack of interest as well as enthusiasm on the part of the members of parliament in their regular routine work of the Commons, parliamentary democracy has inevitably resulted in the strengthening of the powers of the Cabinet at the expense of the House of Commons. Ramsay Muir gives us a vivid pen-picture of the House of Commons in an ordinary evening, when visitors will see "Forty or fifty men and one or two women sprawling here and there on the benches, listening to—no, not as a rule listening to, but enduring—a speech from one of their members, while waiting for an opportunity to make speeches of their own. There will be others in the House, some in the lobbies, writing letters, others in the library, hunting out references for a speech or preparing an article, others in the smoke rooms chatting or playing chess, others in the dining rooms, or on the terrace entertaining visitors ; none of them paying any attention to the debate, but all waiting to record their votes without having heard the argument. There will be others in clubs within call, or dining with friends or at the theatre ; they will come in towards the end of the evening ready to take part in divisions having been told by their whips that the discussion will be carried on until such an hour, when a division will take place ; sometimes the discussion has to be artificially prolonged in order to fulfil the promise." To quote Sidney Low : "The members of the House of Commons are occupied in various ways ; they have many things to interest them during the short London session ; and though they may have every desire to do their political work properly, the circumstances are much against them. Half the House is taken up with business, and the other half with amusement. As the session goes on, and weather grows warmer, and the London society plunges into its summer rush of brief excitement, many members find it difficult to devote their energies steadily to the parliamentary duties."

Thus, conditions of parliamentary life are such as are not conducive to enable the House of Commons to control the cabinet effectively. As pointed out by Lord Rosebury, "The theoretical responsibility of the cabinet to the House of Commons is normally and regularly kept in abeyance for half the year. During the whole of the parliamentary recess, we have not the slightest idea of what our rulers are doing, or planning or negotiating, except in so far as light

is afforded by the independent investigations of the press." As the House of Commons is really a very large and unwieldy body, on account of its size it cannot control effectively the cabinet which really carries on the government and which consists of men who are in close and intimate touch with the affairs of the state who have also acquired a grasp of the details of the government policy and who also enjoy an almost unchallenged leadership in the House.

Thus the parliamentary system of government based on a party majority subject to rigid rules of party discipline tends to make the cabinet autocratic. This trend in constitutional government has become a notable feature of all countries that have adopted the cabinet type of executive. But, as Rosebery remarks, it is however, "an autocracy exerted with the utmost publicity, under a constant fire of criticism, and tempered by the force of public opinion, the risk of a want of confidence, and the prospects of the next election." The cabinet must always have its fingers on the pulse of the House of Commons and especially of its party majority therein; it must be even more on the alert for expressions of public opinion outside the House; for British democracy is governed by public opinion and the cabinet, whatever might be its political complexion, cannot afford to ignore the potential influence of public opinion in matters of major importance, for it is the ultimate sovereignty of public opinion which is the guiding principle of the British constitution.

Control of Parliament by the pressure of public opinion has become a marked feature. There has grown up the doctrine that important legislation should be undertaken only after getting the "mandate" of the people through a general election. No modern government can afford to ignore public opinion. The legal sovereignty of Parliament has thus become limited in practice.

The present system of local government in England is the result of the Acts of Parliament passed in the years 1835, 1888, 1929, and 1933. In England there are, at present, five principal units of local government. They are the county, the borough, the urban district, the rural district and the parish. Among these, the county is the largest division of local government in England. The counties are of two kinds, historic counties and administrative counties. There are at present fifty-two historic counties and sixty-two administrative counties. The historic counties have lost their importance since 1888, and they do not have any governmental machinery. They serve as units for the administration of justice and form constituencies for election to Parliament. Each of the administrative counties has a county council, which forms the governing body of the county. The councillors are elected for a term of three years by all the voters in the county, and the number of councillors is proportionate to the size of the population. These councillors in turn elect the aldermen, who form one-third of the total number of councillors. The aldermen may be chosen, either from among the elected councillors, or even outside their ranks. The aldermen's term is six years, unlike that of

the councillors, and half of them retire once in three years. The councillors and the aldermen jointly elect a chairman, usually from among themselves, but at times from outside. The councillors and the aldermen sit together and have the same voting power. The council meets once in three months at regular intervals. The Act of 1929 required the establishment of at least twelve committees to advise on matters like public health, education, finance, housing etc., and in fact there are as many as twenty or thirty committees in some of the counties. The councils and the committees lay down the general principles that should be adopted in the governance of the county. The actual work of carrying out these decisions is done by a permanent staff of county officials. These officials are chosen by the county council, on consideration of their professional merit. Unlike the civil servants of the country, they may be dismissed at any time, but they are very rarely removed from office on partisan or political grounds. The council is expected to decide questions of policy, supervise the work of the rural district councils, look after the upkeep of public buildings, roads and bridges, and maintain schools, and levy taxes to meet the expenditure involved in carrying out its work.

The administrative counties are divided into rural districts and urban districts. There are about four hundred seventy-five rural districts, five hundred and seventy-two urban districts. Each rural district has an elected council and other minor officials. These district councils look after matters like sanitation, water supply and public health, and they have power to levy rates to meet the expenses. The urban districts also have similar elected councils consisting of as many members as there are parishes. But, the urban district councils have somewhat more extensive powers than the rural district councils. A rural district may become converted into an urban district, if it becomes thickly populated, and likewise an urban district may become converted into a borough for the same reason.

These urban and rural districts are further divided into urban and rural parishes. The parishes too, if large, have elected councils, and if small, primary meetings or meetings of the people of the parish. The rural parishes look after minor civil and ecclesiastical duties, while the urban parishes confine themselves to ecclesiastical functions only. The only political duty of the parish is to invite the attention of higher authorities to matters requiring their attention.

A borough is an urban area that has received a municipal charter. Boroughs are of two kinds, municipal and county. Whereas the municipal boroughs are subject to the authority of the administrative counties, the county boroughs are independent of the control of the administrative counties. A municipal borough, which has a population of 100,000, can become a county borough with the consent of Parliament. On the whole there are about two hundred and seventy-five boroughs, out of which eighty-three are county boroughs. Each borough has an elected council, consisting of coun-

cillors elected for a term of three years, like the county councillors. But, unlike the county councillors, one-third of their number retire every year, with the result that elections are held every year, unlike in counties. Here, also, the councillors elect aldermen, to the extent of one-third of their number, for a term of six years. The councillors and the aldermen then jointly elect a chairman who is called mayor. The mayor holds office for one year and is eligible for election. The mayor presides over the council meetings, wherein both the councillors and the aldermen sit together, and have equal powers of voting. The mayor has no power of veto and makes no appointments, unlike his counterpart in America. The post is one of honour and carries with it no salary. As in the case of the counties, there are several committees, and the actual work of administration is carried on by the municipal service, which consists of heads of departments and subordinate officials, who form the permanent staff of the borough. The council has legislative, executive and financial powers. It adopts the bye-laws, appoints the borough officials, supervises the municipal departments, prepares the budget and determines the local rate.

Even though these local bodies have extensive powers, they have been slowly brought under the control of the central government. The changed conception of the state as a welfare state is mainly responsible for the change that has come about. The national government at first came forward to grant subsidies in aid of various services to the local bodies. Then it claimed the right to supervise the spending of the money so granted and thus began to interfere with the jurisdiction of the local bodies. In this way, the ministry of health, the home office, the board of education, the ministry of transport, the board of trade, and the ministry of agriculture have established their control over the local bodies. However, it must be remembered that the central government has not come forward to undertake the work of local administration. The central government confines itself to simply giving advice, direction, approval or disapproval and lays down general rules and regulations. Under modern conditions, a uniform policy affecting public health, poor relief, education etc., throughout the country is necessary. Hence the control of the local bodies by the central government is justifiable.

Some important towns like Oxford have the status of counties. The City of London (a small area in the heart of London) has a corporation consisting of two Houses—the only example in the world of a municipal, bicameral body—consisting of the Court of Aldermen and the Court of Common Council, presided over by a Lord Mayor. The rest of London has the status of a county.

The present-day organization of the judiciary of England is the result of the Judicature Acts of 1873-1876. One of the important characteristics of the judiciary of England is that there is a bifurcation of the courts into civil and criminal courts. Taking into consideration the organization of the criminal courts, the lowest criminal court is that of the Justices of the Peace. The Justices of the Peace

are local men appointed by the Lord Chancellor to try petty offences like riding a bicycle without a light at night. In such minor cases, the Justice of the Peace has the power to impose a fine up to a maximum of twenty shillings or order the criminal to be imprisoned up to a maximum of fourteen days. Once in a week, two or three Justices of the Peace meet together and form the Petty Sessions, which deals with minor cases like breach of the peace and minor thefts. This court has the power to impose a fine up to a maximum of fifty pounds or order imprisonment up to a maximum of six months. Once in three months, all the Justices of the Peace in the county meet together and form the Quarter Sessions, which tries important criminal cases and also hears appeals from the Petty Sessions. The Justices of the Peace are expected to serve without any payment for their service.

Cases of murder or manslaughter and other serious cases are reserved for trial by the "Assizes". The Assizes are periodical courts, presided over by one or two judges of the High Court, who go on circuit. These courts employ a jury of twelve. Appeals from this court is taken to the Court of Criminal Appeal set up in 1907 which is composed of not less than three judges of the King's Bench Division of the High Court of Justice. If the Attorney-General consents, an appeal can be made to the House of Lords, on points of law.

The lowest civil court in England is the county court, before which is brought cases which do not involve large amounts. This court meets frequently and is presided over by a judge appointed by the Lord Chancellor from among barristers of seven years' standing. Appeals from this court can be taken to the High Court of Justice, on points of law. Even against the decision of this court, appeals can be made to the Court of Appeal which is the highest branch of the high court of justice. The final court of appeal in civil cases also is the House of Lords, to which appeals lie on points of law.

The House of Lords is the highest court for Great Britain and North Ireland in civil and criminal cases. As court of first instance, the House had the power in the past to try peers accused of treason or felony. But, this power was voted away in 1948. Impeachments by the House of Commons can be tried only by the House of Lords. But, the practice of impeaching royal officials has been given up, as a result of the growth and development of the principle that ministers must resign when they forfeit the confidence of the House of Commons. Impeachment has never been used after 1805. It must be noted that all members of the House do not take part in trying appeals. The nine Lords of Appeal, and other members of the House who had been judges or lawyers only attend to this work. As Ramsay Muir has observed, "The law court, which is called the House of Lords, is in reality quite distinct from the legislative assembly of that name".[1]

[1] The House of Lords, as a court, sits in the morning. As a legislature, it meets in the afternoon. The two are really distinct. Just like other courts, the House of Lords sits as a court, even though Parliament is

Mention must be made of the Judicial Committee of the Privy Council, which hears appeals from the Dominions and the colonies. This was set up in 1833. It is composed of the Lord Chancellor, former Lord Chancellors, the Law Lords, the Lord President of the Privy Council, and a number of judges, drawn specially from the Dominions and the colonies. As in the case of the House of Lords, here, also, the work is done not by all the members, but by the Lord Chancellor, the Law Lords and the other judges drawn from the dominions and the colonies. The Judicial Committee does not deliver judgments, but only recommends to His Majesty its decisions. The judgment will then be published in the form of an order-in-council.

The administration of justice in Britain is based on sound principles of justice. The whole burden of proving the guilt of the accused rests on the prosecution. Trials are always open and the accused can have the help of lawyers. One can be convicted only after his guilt is proved before a jury consisting of laymen empanelled to attend the court. Civil liberty is very well safeguarded not by any declaration of Fundamental Rights, but through the principles of the rule of law, come down from the past. The judges are the ultimate guardians of individual rights. If any one is detained without trial he can apply for a writ of Habeas Corpus, which would compel the jailer to produce the person before the court, and explain why he is detained in prison. If the judge finds that the detention was unlawful, he will release the person. The person concerned can then collect damages from the wrong-doer for unlawful detention. In the same way, all individual rights are protected by the courts.

Robson remarks, "One of the most striking developments in the British constitution during the past half a century has been the acquisition of judicial power by the great departments of state and by various other bodies and persons outside the courts of law." But, with regard to this, we must remember that the mingling of administrative and judicial powers is not new in England. The king's court in the twelfth century had administrative as well as judicial functions. Montesquieu misread the position when he regarded the English constitution as based on the doctrine of separation of powers. Thus, an administrative officer like the sheriff had judicial functions, while judges like justices of the peace had administrative functions, We must also note that various causes led to the recent delegation of judicial powers to government departments. The tendency to substitute state control in place of the old *Laissez-faire* policy necessarily led to this development. Robson observes, "Social interests cannot be secured or a social policy effected by the applica-

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[Contd. from page 56.

prorogued or dissolved. It hears appeals from the Court of Appeal and the Court of Criminal Appeal in England, Court of Session in Scotland and the Court of Appeal in North Ireland.

tion of abstract principles of justice as between man and man." The tendency of the judge would be to consider the requirements of the law rather than social needs of the community. Present-day conditions demand a limitation of the rights of individuals in the interest of the community and this necessitates a technique quite different from the methods followed in the courts of law.

Dicey drew a contrast between the rule of law in England and the system of administrative law in France Wade defines administrative law as "the body of rules which determine the organization and duties of public administration and which regulate the relation of the administrative authorities towards the citizens of the state". The ordinary courts of law have no jurisdiction in such matters which come before administrative courts composed of officials who determine the rights of the state by special rules not applicable to private individuals. It is no longer true to say that this contrast exists. In the last edition of his *Law of the Constitution,* Dicey himself realised it. Not only are administrative tribunals functioning in England but in the case of the Local Government *vs.* Arlidge (1915) it was even laid down that an administrative tribunal need not follow the methods adopted by the ordinary courts of law but can employ any rules which may appear convenient for the transaction of business.

Till 1797, England, like France, recognised both silver and gold as legal tender and both could be freely coined at the mints. This bimetallism continued till the later eighteenth century. In 1798, free coinage of silver was stopped, in 1816 a single gold standard was adopted and silver coinage became simply a token currency. The Bank of England, founded in 1694, obtained in 1708 practically a monopoly of the right of note issue, which was confirmed by the Bank Charter Act of 1844. The banking system of England became a model to the world of sound and conservative financial management. Till the First World War, London remained the supreme financial centre of the world.

After the Revolution of 1688, taxation became the main source of the revenue of the state in times of normalcy, loans being taken only in periods of emergency like wars. The most important direct tax —the income tax – began at the time of the French Revolution War. The tax illustrates the modern tendency to adjust rates of taxation so as to press more on the rich rather than on the poor. The income tax is so graded that people in the lower income groups do not pay any tax, while those with higher incomes pay a graded tax with a surtax on the tax. Legacy duty and succession duty payable by beneficiaries receiving property began about the end of the nineteenth century. The customs duties are the most important of the indirect taxes. They are now levied on a protective basis, combined with imperial preference, favouring Commonwealth goods according to agreement with Commonwealth countries. Excise duties are collected on various articles including liquor, tobacco,

ugar and some luxuries. The term "excise" includes certain taxes ı the form of licenses, entertainments duty and purchase tax.

The old colonial policy of exploiting the colonies in the interests f the mother country changed after England lost her American olonies. Britain developed a colonial empire extending over all he continents and a policy was followed of extending representative nstitutions culminating in the grant of responsible government in uitable cases. Before the First World War, the British Empire ell into two divisions. Canada, Australia, New Zealand and South Africa which enjoyed responsible government were called Dominions, s distinguished from other parts of the empire which were commonly alled Crown Colonies. The Dominions, though regarded as legally ubordinate to Britain, enjoyed practical autonomy in internal affairs. They also met Britain in periodical conferences called the Imperial Conference where problems common to the empire were informally liscussed. During the course of the First World War, India, though ıot a Dominion, was admitted to the Imperial Conference. After he war, South Ireland became a Dominion under the name of the Irish Free State.[1] An important law, the Statute of Westminster (1931), freed the Dominions from all legal subordination to Britain, whether in the internal or external field. The term "Empire" fell into disrepute and was replaced by the term "Commonwealth". After the Second World War, India, Pakistan, Ceylon and the Rhodesia-Nyasaland Union became Dominions[2]; but, South Ireland left the Commonwealth. Later, India and Pakistan declared their resolve to become republics, but in association with the Commonwealth. Thus, the Commonwealth now consists of three groups: (1) Canada, Australia and New Zealand continue to bear allegiance to the British Sovereign, though otherwise independent[3]. South Africa adheres to this group now, though its present government wishes to make the land a republic. (2) India has become a republic bearing no allegiance to the British Sovereign. But, she recognises the Sovereign as the Head of the Commonwealth. Pakistan is expected to take the same position after she has adopted her new constitution. (3) Other parts of the British possessions are legally subordinate to the British Government, though some of them like Malaya have been endowed with representative institutions.

Till the eighteenth century, England was mainly agricultural. It was only after the Industrial Revolution of the eighteenth century that England developed into an urbanised land. The population which was about nine millions in 1801 jumped up to about fourteen millions by 1831. By 1931, the total population (excluding that of Ireland) was about forty-five millions. By 1954, the population in England and Wales alone was about forty-four millions. Throughout, the preponderance of the urban population over the rural was main-

[1] Later Eire.

[2] Responsible government has been extended to the Gold Coast in Africa. Evidently, it can rank as a Dominion.

[3] Ceylon and the Rhodesia-Nyasaland Union are, at present, in this group.

tained. In 1861, the proportion of the urban population to that of the rural was 62·3%. In 1921, it was 79·3%.

Unlike France and Germany, British industrial development owed practically nothing to state help. Private individuals used their own wealth or borrowed capital in industry. Private initiative led to English dominance in manufactures and trade and also promoted colonial enterprise. The *Laissez-faire* policy of the government is well illustrated in the field of transport. Unlike France where from 1743 roads were systematically improved by the state on a well-planned uniform system, roads in England were little cared for. This condition of the roads stimulated the development of canals in the eighteenth century. Here also, they were built by numerous private companies and they naturally varied in gauge, depth, upkeep and rates. Contrast Belgium, which, soon after its formation, began a systematic process of construction which made Belgium one of the most highly canalised countries in Europe. When railways began later to compete with canals, the state never came to the rescue of the canals. Many of the canal companies failed and many sold their canals to the railway companies. In countries like France, Belgium and Germany, canals were not so much superseded by the railway, because they were, for the most part, state-subsidised or state-managed. Even as regards the railways, no attempt was made by the English government to lay out a national system on a systematic plan. Contrast the uniform national system in France and the U.S.A. There were differences in the gauge and rates, patchwork development and competition among the companies. It was only by 1840 that the state realised the importance of regulating the railways through the Board of Trade. The Railway and Canal Traffic Act of 1888 led to the fixing of maximum rates for all railways by 1893. The government later attended to the condition of railway workers.

By now, the old belief in *laissez-faire* was fading away. The terrible condition of factory workers after the Industrial Revolution shocked and horrified public conscience. The early Factory Acts were the unwilling work of a government over which the doctrine of *laissez-faire* still held away and were largely due to the agitation of individual philanthropists. It was only the Act of 1833 which forbade child labour and appointed factory inspectors. Though reform began, belief in the sanctity of *laissez-faire* animated influential classes for the greater part of the nineteenth century. Still, admission of the working classes to greater political power led to increased state interference to enforce elaborate codes of labour legislation. In 1897, the principle of compensating workers for accidents arising in the course of employment was recognised in law. In 1908 began a system of old age pensions and in 1911 began a system of insurance to help workers during sickness and unemployment. While Germany anticipated the former, England was the pioneer in unemployment insurance.

While in the early nineteenth century it was held that the

government should govern the least, by the twentieth century, it was accepted that the state must supervise and regulate wages, hours of work, conditions of employment and prices and that it must provide various services to the community. National shipping was helped by subsidies, bounties, exemption from taxes, loans etc. The old idea of Free Trade has become modified. British industry and trade has been helped after the First World War by a system of Protection accompanied with Imperial Preference so as to develop trade within the British Empire and Commonwealth, and by agreements with foreign countries. British agriculture is stimulated by laws like the Small Holdings Act (1908), the Agricultural Credit Act (1928), state-aided agricultural education and improvement of the condition of agricultural labour.

Trade unions got increased powers from 1871 and this stimulated the growth of the Labour Party which believes in Socialism. The experience of the First World War when the government had to enforce far-reaching control on transport, industry, prices and wages accustomed the community to greater state control. All this prepared the way for the concept of the Welfare State emphasised by the famous report of Sir William Beveridge about a plan of "Social Security" put forward after the Second World War. The idea of this is that every citizen has a right to a decent livelihood, sufficient provision for security against sickness, accident, invalidity and old age and sufficient opportunities for education and recreation. These proposals were largely implemented by the Labour Government which came to power in England in 1945.

The same Labour Government has also carried out a far-reaching scheme of nationalisation according to which a number of basic industries like coal-mining, supply of gas and electricity, and the iron and steel industry have been taken over by the State. Railways, canals and airlines have also been nationalized, as also the Bank of England. These are administered by public corporations appointed by the government. It is noteworthy that the Conservative Government, which followed the Labour Government, has not gone back on these changes, except with regard to the iron and steel industry, and road transport.

CHAPTER II

INDIA

UNLIKE as in the British Constitution, the various constitutional changes in India were made by Britain by acts of the British Parliament. But, like it, there was no fixed constitution created at one stroke. Changes arose according to circumstances. The powers of the Government of India were derived from (1) authority given by the British Parliament, (2) authority inherited from the East India Company which succeeded to powers exercised by old rulers in many places.

Of the European powers who set up trading settlements in India, Holland was the first to adopt a definite system of organisation. The Dutch East India Company was governed by representatives of different Dutch provinces. The capital floated was eight times greater than that of the Britith East India Company and it enjoyed great State patronage. Of all parts of Holland, Amsterdam and Zealand organized the best equipped fleets. They urged the abandonment of the policy of separate voyages and pleaded for a joint stock company. Whenever possible and necessary, the Dutch made defensive alliances with native chiefs and took advantage of dissensions to make themselves supreme. Coen, the Dutch administrator, laid down the following principles : (1) Sea-power must be based with a territorial basis in Malaya Archipelago. (2) Dutch Empire should be based on slave labour. (3) The empire should be guarded by a well-planned system of fortresses and should be economically profitable to the mother country. Holland was the first European power to send a steady supply of able men to the East and support them by encouragement and supplies. The English learnt much from their experience.

The Charter of 1600, granted to the English East India Company, gave it the legal right to purchase property and to make bye-laws. This charter, granted by Queen Elizabeth, was similar to the charters granted to similar companies. A governor and a committee of twenty-four managed the affairs of the company. This committee, originally nominated, was later annually elected by the members of the company. It was controlled by a General Court consisting of holders of £500 stock.

The early Stuarts regarded the Company as a creation of royal prerogative. But, Cromwell also encouraged it. In 1686, Sir Josiah Child, Chairman of the Directors, got from James II a charter conferring large civil and military powers including rights of coinage, erecting fortifications, making and concluding war and setting up civil and criminal courts. Like the Dutch, he wanted to make the English militarily strong in India. He sent out officers of skill. Thus, under the charters granted in the Stuart period, the powers of the Company developed, as seen from the *Calenders of the Court minutes of the Company.*

The history of the British government in India till the close of the seventeenth century centres round the organization of the East India Company. Ilbert mentions three periods in the history of the growth of British power : (1) 1600-1765. Now, the Company was mainly a trading organization. (2) 1765-1858. Now, the Company got a large empire and its functions became mainly political. (3) 1858-1947. Now, the government was in the hands of the British crown.

Ilbert points out that British authority in India may be traced to a twofold source : (1) From the British crown and parliament. For instance, in Bombay, the Company exercised sovereign power by grant of the crown. Unlike Surat, Bombay was outside the Mughal Empire. Oxenden visualised its future and his successor, Gerald Aungier (1669-77), Governor of Surat, set up the greatness of Bombay. (2) The Company derived power also from the Mughal Emperor or other rulers. Thus, in Calcutta, it ruled as the agent of the Mughal Emperor and got from him the *Diwani* (control of revenue and civil justice). In Madras, the Company paid rent to Golkonda and, after its fall, to the Mughal viceroy of the Karnatak. But, the feebleness of the Mughal power left it largely independent.

The position was complicated by the hesitation of the English government to assume formal sovereignty over the area which it really controlled. The exact date when parliament claimed to assert its authority has usually been placed in the year 1767 when it asserted the right to interfere. From now, interference increases. Ilbert remarks : "Whenever a chartered company undertakes territorial sovereignty on an extensive scale, the government is soon compelled to accept financial responsibility for its proceedings and to exercise direct control over its actions."

The fact that the Company respected for long the formal authority of the Mughal Emperor was explained as a device to conciliate Indian sentiment and mask foreign rule. But, the *Cambridge Short History* says that the masses never bothered about who ruled, so long as they were not taxed beyond custom, and that the important classes knew who ruled. It says that the real reason was to prevent the British cabinet from seizing the possessions of the Company in the name of the crown.

Though technically the Company was a mere zamindar for the emperor, the councils in Calcutta and Madras were having direct authority beyond the towns and indirect control in revenue collection and defence throughout Bengal and Karnatak. In the seventeenth century, the Company had its legal basis in letters patent issued by the crown. But, interference of parliament became inevitable, after the dominance of parliament from the time of the Revolution. Parliament held an enquiry about Clive between 1772 and 1773. It was only in 1813 that parliament formally asserted its sovereignty and this position was accepted by France and Holland in the treaties made in the succeeding year. Till then, in all eighteenth century statutes, this sovereignty was not asserted.

Two Select Committees of parliament revealed abuses and this led to the Regulating Act of 1773.[1] This was the first attempt to define the government of the Company, though it was a half-measure. Ilbert points out that this act made India a protectorate. Till now, the home government of the Company consisted of a Court of Proprietors who elected each year a Court of Directors. In each factory in India, there was a President helped by a Council of four senior merchants. From this President comes the term Presidency. He was called also a governor. He had no power to overrule the council and each presidency was independent. The Regulating Act fixed the qualifications for voting in the Court of Proprietors as holding £1000 stock, with the object of preventing the servants of the Company, who had retired, from influencing the Court of Directors—an object which failed. The Court of Directors were to sit for four years, a quarter being annually renewed. The Act set up a Governor-General in Bengal. The Governor-General and his council were named in the Act and the Company could appoint to these offices only after five years. The Regulating Act, however, left the titular authority of the Nawab of Bengal intact. The act was defective in many respects. As Ilbert remarks, the boundary between the executive and the judiciary was left undefined. The Supreme Court created by the Act consisted of a Chief Judge and three puisne judges appointed by the crown.

In 1726, Mayor's Courts had been set up in the three presidencies to try civil cases and Quarter Sessions to try criminal cases. The Supreme Court superseded the Mayor's Court in Calcutta, and a conflict of jurisdiction began between it and the "Sadr" Courts set up by the Company in Bengal. The wording of the Act was that its jurisdiction should extend to all British subjects. This was vague, because it might include all the people of Bengal or only of Calcutta or only Englishmen. The Company, as the diwan of the emperor, rejected this jurisdiction, while the Supreme Court claimed power over all Company's territories and tended to regard its government as an agency to be supervised by it. While the executive government was responsible to the Company, the judicial organ was responsible to the crown. Sir James Fitzjames Stephen explains the reason for this as follows: "It was considered, not without reason, that by establishing courts independent of government, armed with somewhat indefinite powers and administering a system of law of which they were the only authorised exponents, a considerable check might be placed upon despotic tendencies on the part of the government." But, this plan proved unworkable and a period of border warfare began. The Patna and the Kasijurah cases illustrate this violent conflict.[2] The Supreme Court released persons arrested for revenue default and interfered with the decisions given by the mofussil

[1] See Ilbert—*Government of India* for a discussion of this law. Dr. Das Gupta (*Central Authority in British India*) deals with the difficulties caused by it.

[2] Smith (*Oxford History of India*) describes these cases. Sir James Fitzjames Stephen supports the courts. Roberts (*Cambridge History of India*) also takes the same line.

Company courts. The later Act of 1781 deprived the Supreme Court of jurisdiction over all public acts of the Governor-General and his council and matters of revenue collection. It confined its jurisdiction to Englishmen and to inhabitants of Calcutta and laid down that Hindu and Muslim law should be applied to civil cases of the respective communities.

The provision that the regulations issued by the Governor-General and his council would have to be approved by the Supreme Court which the Regulating Act contained led Cowell (*History and Constitution of the Courts and Legislative Authorities in India*) to comment on this pernicious feature of subordinating the legislature to the judiciary without proper definition. The later Act of 1781 abolished this provision also.

Another defect was that the Governor-General was unable to overrule the councillors. One of them, Philip Francis, made the council block the acts of the Governor-General, Warren Hastings. The connection of Francis with the Junius Letters, which seems to be established, has led to the theory that his appointment was a reward for their discontinuance. Miss Weitzmann (*Warren Hastings and Philip Francis*, 1929), while illustrating the great ability and learning of Francis, stresses also his rancorous temper. But, she holds that Francis came to India with ideas instilled into him by Clive which were quite opposed to those of Hastings. He favoured non-intervention, a pacific foreign policy and permanent revenue settlement. She remarks that, while the administrative system of Hastings survived, the Francis tradition survived in the policy of the government. It was only later on that the Governor-General was allowed to overrule his councillors. A later Governor-General, Wellesley, was masterful and reduced the share of the council in administration to nothing, usually deciding all matters himself.

Another defect of the act was that the subordination of the Madras and Bombay governments to the Governor-General was not complete. As Das Gupta points out (*Central Authority in British India*), the object of the act, to enable the three presidencies to present a united front to the enemy, could not, therefore, be achieved. This defect had also to be rectified later.

The *Montagu-Chelmsford Report* remarked that the "Act violated the first principles of administrative mechanics". Keith (*Constitutional History of India*) remarks that it "created a Governor-General who was powerless before his own council and an executive that was powerless before a Supreme Court."

The India Bill of Fox aimed at abolishing the Court of Proprietors and Directors and vesting the control of administration in a new body of seven Directors named in the act. But it was not passed. Still, the loss of America had increased British attention to India and increased the need of imposing more control on the Company. The India Bill of Pitt was also based on the same idea as that of

Fox, bringing the Company under the permanent control of an organization representing the government. He avoided the offence caused by Fox of placing the patronage in the hands of the government. Patronage was left to the Company. But, the action of the Company was subjected to the political control of an official body of six, the Board of Control. This board could revoke or modify the orders of the Directors. C. H. Philips (*East India Company*) calls the act ambiguous and not precise. Hence, Dundas, the first president of the board of control, was able to assume all its powers. Kaye points out that the whole policy of the Company came to depend on a single man who might change with the ministry. Further, procedure was still cumbrous and dilatory. The "double government" set up now divided responsibility. The Directors could recall a Governor-General appointed by the Crown. The president of the board of control could act without reference to the Directors.

Still, we must remember that the act embodied a political compromise in which the powers of the board of control had to be concealed. Enquiries into the conduct of the Company had been often used as material in the party warfare between the Whigs and the Tories, and the Whigs had used events like the impeachment of Warren Hastings "to parade their noble principles." The act led to some improvement in the government. The Court of Proprietors lost all functions except election of Directors and receipt of dividends. Philips shows that, sometimes, the Company exercised some influence on the board of control through its influence on the president. The Charter Act of 1793, which extended the charter for twenty-four years laid down that the members of the board of control should be paid out of Indian revenues.

The Act of 1784 also declared that "the pursuit of schemes of conquest were repugnant to the wish, the honour and policy of the British nation." But, as has been remarked, "the immediate result of bringing India under parliamentary control was to stimulate, not to slacken, the expansion of our territories."

Periodical parliamentary enquiries followed before the charter of the Company was renewed. But, with each renewal, the control of parliament became more and more strict. In 1812, the Government of Lord Castlereagh was free from its desperate struggle with Napoleon and could attend to India. A committee of the House of Commons, after a minute investigation, issued its report (the famous Fifth Report) which forms a standard authority on Indian administration at that time. Ilbert says, "The Fifth Report is still a standard work on land tenure, and judicial and police arrangements of the times." The Charter Act of 1813 allowed the Company to continue as the administrative agency, for it was felt that the great Indian patronage should best be left to it instead of to the politicians, and politicians were satisfied with actual control.

The question of the renewal of the charter came again when Lord Grey was the Prime Minister (1830-34). As before, there was

no anxiety to take over the administration. A parliamentary committee of 1833 reported favourably on extending the charter which was now renewed again for another twenty years. The Act[1] set up for the first time a rudimentary legislature in India, thus differentiating the executive and legislative aspects of the council. Before this, the executive had also legislative power. The Governor-General in council, as well as the Governors-in-council of Bombay and Madras, were given power to issue regulations. Thus, there grew up three series of regulations. Besides these, the law included, also, ill-defined Hindu and Muslim customs. In the presidency towns, the Supreme Courts applied English Common Law, Equity and Statute Law. The regulations, which were meant to suit different places and different conditions, were loosely drawn. Besides the regulations of the three presidencies, there were the regulations of the Governor-General and acts of parliament. Further, under Lord Hastings, there had begun the simpler and more elastic administration called the Non-Regulation System which was developed under Amherst. This was midway between military and civil control. The officials were accessible to the people and the government was personal and paternal. The land was divided into convenient districts with a simple judicial system. Local customs were rarely disturbed. Procedure was simple. Sind, after its conquest, was governed thus. Dalhousie followed the same system in the Punjab after its conquest. These "Non-Regulation" areas developed in course of time, and the distinction gradually disappeared. The system suited only primitive peoples who could not understand complicated procedure.

The conflicting and indefinite nature of the law led to attempts to improve matters. There was added to the executive council a Law Member who was to attend only for legislative work. The council could legislate for all, whether British or Indian, and its laws bound all courts, whether Crown Courts or Company Courts. The Act also authorised the appointment of a Law Commission to codify the Law. The Act of 1833 gave the Governor-General-in-Council power to pass acts for the whole of India. Macaulay, who held office as the first Law Member (1834-38), stood for the liberal principles of Burke and Bentham and his investigations led to the starting of a Law Commission presided over by him. This Commission drafted the Penal Code. But, after his departure, its activity faded. Note that the act of 1833 deprived the councils of Bombay and Madras of their independent powers of legislation.

The act proposed a Presidency of Agra with a separate governor and council. But this provision was not carried out. Another act of 1835 made it a lieutenant-governorship under the name of the North-West Provinces.

The act allowed English settlers to hold land in India—a provision which led to abuses later on.

The act was based on Whig principles. Macaulay was then

[1] Full discussion in the *Cambridge History of India*, Vol. VI, Ch. 1.

secretary to the board of control and James Mill held a high post in the India Office.

The Charter Act of 1853 made the Law Member an ordinary member of the executive council which therefore now had six members, including the Governor-General and the Commander-in-Chief. Six "additional" members called "Legislative Councillors" were added to it for legislative purposes. These were the Chief Judge, a puisne Judge and one representative each from Bombay, Madras, Bengal and the N. W. Provinces. Thus, the Legislative Council consisted of twelve. Legislative business was separated from the executive and conducted in public. The principle of provincial representation was recognized. But this enlarged Council began to exercise independent powers of legislation under Dalhousie and to give trouble to the executive. Adopting procedure based on that of the House of Lords, it called for papers and interfered with executive business, criticising the government.

The Mutiny saw the end of the Company. "Double Government" had always led to complications and delay owing to endless correspondence. The Company had ceased to fulfil its original functions even by 1813. Its political authority had been attacked by Adam Smith and its misrule had led to parliamentary intervention. It still hampered administrative matters which it did not approve and could disturb the policy of the government by recalling the Governor-General. Appointment of officials by competitive examinations from 1853 had removed the old fear of abuse of patronage by the crown. Men like Sir George Cornwall Lewis urged the abolition of the Company. It was admitted that its rule was antiquated. In the words of Sir Lepel Griffin, its rule meant only "an unprogressive, selfish and commercial system of administration". The Company sent an eloquent petition to parliament, drafted by John Stuart Mill, claiming that its rule was beneficent and great improvements in government had taken place. But this petition was disregarded and the act of 1858 transferred the government to the crown. The Company continued till it was financially liquidated in 1874. It had committed political crimes and got territories by questionable methods. The only saving grace was that its territories were well governed. But the assumption of government by the crown was only a formal change. Even if there had been no Mutiny, the end of the Company was inevitable. The act of 1858 completed only what the Regulating Act had begun.

A Secretary of State took the place of the president of the board of control. He was helped by a council of fifteen who were to hold office on good behaviour and could be removed only by an address from both houses of parliament. There was no precedent for this council and the powers given to it were intended to ensure that in all matters, except high policy, the secretary's schemes should be critically reviewed. Disposing of the revenues of India arbitrarily was prevented by insisting on a majority vote of the council for such disposals. The *Cambridge Indian History* justifies these powers on the

ground that the House of Commons would be unable to show any informed interest in Indian affairs. The council had been regarded by some as a body deputed by parliament to exercise a kind of control in certain matters over the Secretary of State. But, the act of 1858 left uncertain the relations between the secretary and the council. The secretary could overrule the council except in finance. He could act in emergencies without consulting the council. At first, the council tried to increase its powers. But, in 1869, the term of councillors was reduced to ten years. After this, its independence suffered and it became simply an advisory body. The vast powers of the Secretary of State were due to his inheriting all powers vested in the board of control and the East India Company and his being a cabinet minister. Extension of these powers depended on his personality.

Parliamentary control was provided by provisions requiring submission of the accounts of India and a statement of its moral and material progress every year to parliament, the provision that Indian revenues should not be spent in wars elsewhere without the approval of parliament and the power of parliament to discuss Indian issues. But parliament became a sleepy guardian. As the Montagu-Chelmsford Report says, "Parliament ceased to assert control at the very moment when it had acquired it." From 1858 to 1919, India was really governed by an autocracy of the Indian Civil Service, controlled only in theory by parliament.

The Governor-General was styled the viceroy. As has been pointed out, this title had no statutory basis and was first used in the Proclamation of Queen Victoria. It did not give any extraordinary power and was simply a title of courtesy. As representative of the sovereign, he exercised certain prerogative powers like pardon.

The power of the Governor-General, however, suffered after 1858. Before this, he could act in emergencies himself, and often confronted the Directors with a *fait accompli*. But, in 1869, the Suez Canal was opened and from 1870 India was also connected with England by submarine cable and telegraph. This reduced the discretion of the Governor-General who would have to obey policy dictated from England, often as the result of international politics. Further, the Secretary of State enjoyed a freedom which the previous authorities never had. His council was subordinate. He was not interfered with by parliament. He was backed by the cabinet. Often, he was a more distinguished personality than the Governor-General. Thus, the Governor-General tended to become the agent of the Secretary of State. Lord Northbrook opposed the policy of Lord Salisbury, the Secretary of State, and was replaced. Secretaries of State like Lord Morley, Montagu and Amery dominated the viceroys.

The position of the Governor-General towards his executive council also changed. The importance of the former increased. In practice, he always took over foreign affairs and controlled foreign policy. All members had to discuss the important affairs of their

departments with him. He could discuss the matter further with the secretary of the department. Thus, the secretary of the department was not a mere servant, but occupied a key position. The secretary was nominated to the legislature and thus played also the part of a parliamentary secretary. The Governor-General became the centre of the administration Only on a few occasions since 1858 had the council forced the Governor-General to exercise his power of overruling the majority. Lord Lawrence passed the Punjab and Oudh Tenancy Act of 1868 against a majority of his own council who were supported by vested interests like land-owners. Lord Lytton, obeying the Secretary of State, overrode his council and removed the import duties on cotton goods from Lancashire. In the same way, Lord Elgin imposed a countervailing excise duty on Indian cotton goods. The general tendency of the council was complaisance. As Chailley remarks, "The theoretical equality with the viceroy has, in practice, disappeared." The executive council resembled a cabinet in consisting of heads of departments ; but, unlike it, it did not represent any political party ; nor was it responsible to the legislature. Members need not even hold the same view, need not resign if their policy was disapproved and could record minutes on any subject discussed. Its procedure was bound by rules and regulations. Secretaries and deputy secretaries could attend meetings. Mill (*Representative Government*) has eulogised the system in which, while final responsibility is vested in one, the councillors should occupy a position of responsibility for their opinions. But, in practice, the council was subordinate.

Dr. Rudra (*Viceroy and Governor-General of India*) shows that the office of the Governor-General was what its occupant chose to make it and each had left his personal impress on it. Lord Curzon and Lord Reading exercised great influence on all departments. Lord Willingdon went to the other extreme and did minimum work, avoiding even frequent meetings. Lord Linlithgow attended to all details. He announced the suspension of the federation without consulting the executive council. Appointments were also made without consultation. He built up the viceroy's secretariat which became a private secretariat different from that of the Government of India. The act of 1935 transferred paramountcy over the Indian states from the Government of India to him as the Crown Representative. Thus, questions of paramountcy, previously considered by the Government of India, were attended to by him personally. World War II helped to increase his power. Thus, the personal power of the Governor-General greatly increased at the expense of his council. Lord Wavell who, unlike Linlithgow, was not a politician, inherited his tradition of disregarding both the executive and the legislature. Even such semblance of consulting the executive council which Linlithgow preserved now disappeared, and it became simply personal rule. Dr. Rudra criticises the wide legal immunity enjoyed by the viceroy and his immunity from criticism in the legislature, while he could be criticised in the press and platform outside.

After 1858, the control of the centre over the provinces also increased. Before 1858, provincial governments were regarded legally as the agents of the centre. But, in practice, the inability of the centre to control such a vast country from Calcutta, diverse conditions in the various areas, short term of the Governor-General and his multifarious work and the fact that his council was composed of Bengal officials who were ignorant of conditions elsewhere prevented much centralisation. Now, the growth of communications increased central control. The portfolio system adopted after the Mutiny lessened the work of the Governor-General. Introduction of posts and telegraphs tended to produce uniformity in policy. The financial reorganization brought about by James Wilson (the first Finance Member) ensured a better scrutiny of provincial finances. But it may be noted that the effectiveness of central control differed. During the viceroyalty of Lytton, an official minute complained of the notorious insubordination of the Bombay government.

After the Mutiny, the provinces were Bengal, Madras, Bombay, the North West Provinces and the Punjab. In 1858, Delhi was transferred to the Punjab. The period after this saw the rise of new units—Central Provinces (to which Berar was added only in 1903), Burma, Assam, North West Frontier Province (as a result of whose formation the old N. W. Provinces became the United Provinces of Agra and Oudh) and Bihar and Orissa. A new category of lieutenant-governors and chief commissioners arose in the decade after 1860. In 1853, the Governor-General was empowered to appoint lieutenant-governors without councils from the servants of the Company and, in 1854, he was permitted to appoint chief commissioners. These had a lower status than the governors. Delhi became a chief commissioner's province in 1911. The N.-W. Frontier Provinces were ruled by a chief commissioner, the head of the judicial administration being a judicial commissioner. Baluchistan was under a chief commissioner, the tribes here having self-government under tribal elders. The chief commissioner of Coorg was the British Resident of Mysore. This was the only chief commissioner's province which had a legislative council. Till 1943, the British Resident in Rajputana was also the chief commissioner of Ajmer-Merwara. It was only in 1943 that the two posts were separated. The Andamans and Nicobars were under a superintendent. The governors of the three presidencies were appointed from England and the others were usually appointed from the Indian Civil Service on the recommendation of the Governor-General. In 1919, the lieutenant-governor disappeared and most of the units became governor's provinces. The chief commissionerships now were British Baluchistan, Ajmer-Merwara, Coorg, Delhi and Andamans and Nicobars.

An act of 1861 continued the old policy of enlarging the executive council for legislative purposes. As A. Rangaswamy Ayyangar (*Indian Constitution*) remarks, "The executive organ of the state expands itself by means of *additional* members into the legislative organ." There was still no separate legislative council. Additional

members, six to twelve, were nominated, half being non-officials. Indian representation was now allowed. Since the council after 1853 had shown a tendency to convert itself into a parliament and to control the executive, its powers were now restricted. It had no power to discuss the budget. Since there were no private bills, all bills were initiated by the government. The executive could also issue ordinances in emergencies which would be in force for six months. The provinces were restored legislative powers. The councils here were also increased in number for legislative purposes by adding four to eight members nominated by the governor (half being non-officials) and the Advocate General. No line of demarcation was drawn between central and local subjects and the centre could interfere with anything. In case of certain subjects, previous sanction and the subsequent assent of the Governor-General was needed in addition to the sanction of the Secretary of State.

An act of 1892 increased the size of the councils in the legislative aspect, and elected representatives were allowed under the guise of nomination by the government on the recommendation of local bodies. Thus, election was recognised in practice. The councils also were not exclusively legislative as in 1861, for they were given power to discuss financial policy and ask questions under certain limits. But they could not vote on the budget.

Nationalist agitation increased in the country led by Tilak whom Sir Valentine Chirol (*Indian Unrest*) styled the "Father of Indian Unrest". In the Punjab, agrarian discontent was used by Lajpat Rai. The early defeat of Britain in the Boer War and Japan's victory over Russia depressed European prestige. In social relations between the English and the Indians, discourteous behaviour of individual Europeans increased bitterness. Advance of education stimulated political thought and promoted national unity. Indians from all over the country were co-operating in the councils and in organizations like the Indian National Congress and the Muslim League. The national discontent came to a head under Lord Curzon who disregarded Indian public opinion. *The Cambridge Short History of India* makes the specious plea that unrest was not due to popular misery and considers that the people were more prosperous at the close of the 19th century than at its beginning. It says that the real reason is that educated classes were becoming assertive and thinks that Curzon should not be blamed for this inevitable development. But, none can deny that when, in 1905, East Bengal and Assam were combined by Curzon into one province with its capital at Dacca under a lieutenant-governor and the rest of Bengal. Bihar and Orissa were formed into another province called Bengal, it was regarded as a sop to Muslims who were preponderant in the new province and who were supposed to be loyal to the British *Raj*. This partition of Bengal was annulled in 1911 by a royal announcement in a durbar at Delhi. It is characteristic that *The Cambridge Short History of India* criticises this and thinks that the agitation was dying down. It ascribes this step to the influence of Montagu who was under-Secretary to Lord Crewe, the Secretary of State.

Before this, further reforms followed in 1909. Political dacoities were organised by groups of *bhadralogs* (middle class people) in Bengal. Lord Morley, the Secretary of State, in combination with the viceroy, Lord Minto, followed "a blended policy of repression and concession". The policy of reform[1] was meant to "rally the moderates" in the Congress. But, both Minto and Morley disclaimed any desire to introduce parliamentary institutions. Their ideal was "constitutional autocracy". The Montagu-Chelmsford Report says, "The Morley-Minto Reforms are the final outcome of the old conception which made the Government of India a benevolent despotism." The councils were increased in size and, in the provinces, non-official majorities were provided. The principle of election was definitely recognised. The elections were indirect from local boards and municipalities. The constituencies were also formed to secure representation of classes and interests. Hence, the general elective element in the councils was only one of the other elements. The electoral groups were complicated and intended to procure a representation of classes, interests and areas. Besides a property qualification based on payment of tax, rent or land revenue, there were special qualifications for special electorates which were formed for the landed interests, European and Indian commerce, planting and Muslims.

The special contribution of Minto has been said to be the creation of these special constituencies and the principle of nomination of representatives of other classes. This was defended on the ground that in the old councils there was over-representation of urban and professional classes at the expense of landed classes and non-Hindu religious interests. But, this policy began with the evil of communal representation, which ultimately led to the partition of India in 1947. The councils were given power to discuss resolutions. In interpellation, the government was not bound to give information except what it thought necessary in the public interest. The legislature could vote on certain items of the budget, but the government was not bound to accept these recommendations. The councils worked on definitely parliamentary lines. But, indirect election and restricted franchise caused dissatisfaction. The powers of the councils were also limited. There was no ministerial responsibility and the "opposition" was permanently out of office. The use of the official and nominated "bloc" in support of the government made debates unreal. While taxes like salt duty, customs, excise, stamps, registration, opium duty and income-tax were to have legislative sanction, land revenue and the whole procedure of assessment and collection depended on executive discretion. Even regarding other taxes, the councils had no control over receipts and expenditure.

Another contribution of Lord Minto is said to be the inclusion of Indians in the India Council and in the executive councils. The official biography of Edward VII by Sir Sydney Lee shows that the king strongly opposed this and gave way against his will as the cabinet insisted on it. The Countess of Minto (*India—Minto and*

[1] Comment in *Cambridge History of India*, Vol. VI, Ch. 31.

Morley, 1905-10) asserts that Minto played a major part in the formulation of these reforms and that Morley in his *Recollections* takes much of this credit to himself. She contrasts Minto's insight into men with the narrow academic outlook of Morley. But, it is undeniable that the liberal features in the reforms were mostly due to Morley.

In 1911, in the Delhi Durbar, the transfer of the capital from Calcutta to Delhi was announced. This step was intended to conciliate the Muslims who seemed to have resented the annulment of the partition of Bengal. The *Cambridge Short History of India*, which takes a prejudiced view of the matter, condemns this on the ground that Calcutta was "created by English enterprise and Indian cooperation" and was, therefore, the appropriate capital. It regards the announcement of such important changes as carrying out of projects decided by the Cabinet without properly consulting the Government of India and the method of announcement through the king shut out official protest. Many held that the changes should have been first submitted to the British parliament. But, though the building of the new capital cost a lot of money and its actual inauguration was only in 1931, the choice of Delhi was justified by its central position and past history.

During the First World War, the principle of self-determination which England and her allies proclaimed as their war aim stimulated further agitation. By a resolution of the Imperial Conference of 1917, India was given representation in the conference. This also stimulated India's feeling of importance. While the Congress began agitation for self-government, the Muslims were alarmed about the fate of Turkey which had joined Germany and whose sultan claimed to be the Khalif. Muslims had seen the decline of independent Muslim states in North Africa and Persia and wanted to safeguard Turkey. The Muslim League entered into an agreement regarding future constitutional changes with the Congress which was embodied in the Congress-League scheme.

Montagu, the Secretary of State, in consultation with Lord Chelmsford, the viceroy, decided on further changes. On August 20, 1917, the British government announced that the goal of Indian constitutional development was responsible government within the British Empire, thus giving up the idea of benevolent despotism. The *Cambridge Short History of India* does not give the credit for this to Montagu ; but says that it was the result of a cabinet discussion and the final form was due to Lord Curzon (who was in the cabinet) who inserted the words "responsible government". Whatever this might be, this announcement led to a discussion about the future constitution. Lionel Courts in his *Letters to the People of India* advocated progress to responsible government by a process of evolution and gradual transfer of departments to popular control. Thus, he is the author of the concept of "dyarchy" which was later adopted. Montagu and Chelmsford after an enquiry issued a

report which urged (1) complete popular control as far as possible in local bodies, (2) a step to responsible government of the British type in the provinces by transferring certain subjects to the control of the legislature, (3) pending the result of the experiment in the provinces, the Government of India should remain responsible to parliament (but the legislature here was to be made more representative), (4) control of the Secretary of State over the Indian government should be relaxed. Chapters II, III and V of the report summarise the previous constitution. As Roberts points out (*History of British India*) the report, unlike British documents, indulges in philosophising and picturesque narration. When the report was issued for public criticism, heads of the provinces except two, objected to dyarchy on the grounds that the two halves might not display a spirit of compromise and tolerance and that the ministers might use their power to get a majority, as political parties were not well developed. They advocated only a further development of Minto's scheme of increasing Indian unofficial members in the executive councils. The British government, however, passed the Government of India Act of 1919 mainly on the basis of the Montagu-Chelmsford proposals. Two committees under Lord Southborough demarcated electorates and settled the division of provincial aud central subjects and division of "transferred" and "reserved" subjects. A third committee under Lord Crewe considered the Home Administration. A committee under Lord Meston considered financial relations between the centre and the provinces. The bill brought forward by the government was considered by a joint committee of parliament under Lord Selborne and was finally passed into law.

The acts concerning the Government of India had been already consolidated by an act of 1915. This act of 1919 formed, therefore, an amendment of it. The preamble contained the Declaration of 1917. The act allowed a good deal of "delegated" legislation, authorised the issue of rules and orders regarding elections, devolution of powers, legislative business etc. Unlike ordinary constitutions, administrative details like budgetary procedure and rules for admission to the civil service are also found.

Before this, the Government of India exercised minute and multifarious control over provinces, though the three presidencies had some relics of their former independent status in their having power to appeal to the Secretary of State. Ordinarily, the centre looked after common subjects like defence, foreign policy, tariff, exchange, currency, public debt, posts and telegraphs, railways, shipping, audit and accounting of revenue and expenditure, other major communications, copyright, civil and criminal law and certain all-India services like the geological survey etc. The provinces, though allowed jurisdiction in other spheres, were treated only as the agents of the centre. Lord Minto began a policy of decentralization and the Montagu-Chelmsford Report favoured a large measure of provincial independence. Rules under the act dealt with the division of subjects between the centre and the provinces. Common subjects, as

before, were left to the centre. The subjects assigned to the provinces included public works, education, health, agriculture, fisheries, industries, excise, registration etc. Subjects not assigned to provinces were left to the centre. The old divided heads of revenues were abolished. The provinces got receipts from provincial subjects like land revenue, excise, irrigation and stamps. The centre retained customs duties, income-tax and the receipts from railways, salt and opium. The provinces were assigned a share of the income-tax ; but, in return, they had to make contributions to the centre. The provinces were given also specific powers of taxation and borrowing. The previous sanction of the Government of India became unnecessary on purely provincial subjects.

Division was also made in the provinces concerning "reserved" and "transferred" subjects. "Reserved" subjects like justice, police, land revenue, forests, irrigation and famine relief and finance were kept in the hands of the executive councillors who were not responsible to the legislature. Subjects like local self-government, medical relief, education, agriculture, excise, industries, registration, fisheries, animal husbandry, forests and religious endowments were in charge of ministers who were to be responsible to the legislatures. In these transferred subjects, the interference of the Government of India should be only on specific occasions.

The provincial franchise was given to a thirtieth of the whole population. The vote depended on residence along with payment of a small amount of land revenue, rent or rate, payment of income-tax or receipt of military pension. There were urban and rural constituencies and the district was the unit. The legislatures were allowed to enfranchise women if qualified or if they were the wives of qualified voters. The voting age for all was twenty-one. Candidates were to be of the age of twenty-five. There were also special constituencies for commerce, universities etc. Communal representation was continued. But the second vote of the Muslims in the general constituencies was abolished. The franchise qualifications therefore depended not only on residence and occupation, but also on community. This communal representation perpetuated communal distinctions. This device was also contagious. The act extended it to the Sikhs in the Punjab, Indian Christians in South India and Europeans in Madras, Bombay and Bengal. Nomination of members also continued to represent the depressed classes and the Anglo-Indians. A Corrupt Practices Act naturally followed.

The councils had a term of three years. The rules of procedure we laid down by the act and so could not be changed by the councils. After four years, the councils could choose their presidents. Speeches in Indian languages were allowed. Executive councillors continued to sit. But, the old idea of "additional" members disappeared. Though the number of members in the provincial legislatures varied, everywhere there was an elected majority. The power of deciding

disputed elections which was vested in the government before 1919 was now vested in special courts. But the question of the division of powers between the centre and the units and between "reserved" and "transferred" subjects were not left to the courts, but only to the executive.

The provincial councils were allowed not merely to pass bills, but to move motions of adjournments to discuss particular grievances. The Finance Bill was submitted to the vote of the councils ; but provincial contributions and salaries of unserial officers were non-votable. Further, the governor could authorise expenditure by "certification" even where a grant was not voted. He could so authorise expenditure in "transferred" subjects only if necessary for the safety and peace in the province or for the carrying on of the work of any department. Devolution rules under the act laid down that the distribution of expenditure should be agreed to between both halves of the government and that the governor should decide, if there was no agreement. The executive councillors held a term of five years. Regarding legislation, the governor was given power to "certify" certain bills which the legislature might not pass. He could also recommend amendments, veto a bill or reserve it for the sanction of the Governor-General. He could also forbid discussion of any particular topic.

In the centre, there was set up a bicameral legislature. The upper house, called the Council of State, had sixty members of whom thirty-three were elected. The members had a term of five years. These were elected from extensive constituencies and on a high franchise. The council was meant to represent learning, public experience of commercial importance. The Legislative Assembly had 144 members of whom 103 were elected. The members had a term of three years. The constituency was a division consisting of a number of districts, and the franchise was higher than for the provincial councils. The voting age was twenty-five. The imperial electorate was to bear the same proportion to the provincial electorates as the members of the provincial representatives in the assembly bore to that of the elected members in the provincial councils. Communal representation and representation of special interests continued here also.

Both chambers had co-ordinate powers and joint sittings would decide deadlocks. Powers of legislation and finance were the same as in the provinces ; but the previous sanction of the viceroy was necessary for measures affecting public debt, religion, defence, foreign policy, Indian states and purely provincial matters. The Governor-General had also powers of "certification," Certain items like interest on debt, salaries of imperial services, expenditure on defence and for the political and ecclesiastical departments were non-votable. In practice the Council of State never amended money bills. It had no power to vote on financial grants ; but it could discuss the budget.

Parliamentary control continued in the following : Legislation "certified" by the viceroy or the governors should be placed before it. The Indian budget was continued to be formally presented to it. It could discuss motions concerning India and ask questions. The Secretary of State continued to be the real head, though by convention he should not interfere when the government of India and its legislature were in agreement. Just as the Governor-General and the executive council should not interfere in subjects "transferred" to ministers and in provincial finances, the Secretary of State was deprived by the act of powers of interference in "transferred" subjects.

Lord Curzon insisted on central control except in finance. So, as Dr. Bhisheswar Prasad points out (*Origins of Provincial Autonomy*) all that the act of 1919 did was to bring provincial autonomy nearer to realisation than bring about its actual realisation. Even with regard to finance, since provinces had to pay contributions to the centre, the reforms opened with what the provinces regarded as a crippling blow on their resources. This discontent came to an end only after these contributions were abolished in 1928-29.

The India Council continued with its advisory functions. Regarding some matters like the expenditure of Indian revenues, the consent of the majority continued to be necessary as before. But the expenses of the council were transferred to the British exchequer.

After the War, India became an original member of the League of Nations. It must be remembered that even before, she had taken part in international conferences like the Universal Postal Union. But, internally, political agitation continued, inflamed by the arbitrary conduct of Sir Michael O'Dwyer, lieutenant-governor of the Punjab.[1] The Muslims also were alarmed about the Khalifate. Further, from 1919 there were deficits for five years. In 1921, the reformed legislature, at the outset of its career, had to increase taxation. The visit of the Prince of Wales in 1921 was subjected to boycott, and mob violence broke out at many places. The viceroyalty of Lord Reading was one of prolonged trouble. In 1923, holding that continued deficits would damage the credit of India, the viceroy balanced the budget by "certifying" an enhanced salt tax which the legislature refused to accept. Lord Reading had also to press on the British government the need for conciliating Muslim opinion regarding the Khalifate. The unauthorized publication of one of his despatches on this point by Montagu led to his retirement from the India Office.

The viceroy, Lord Irwin, on October 31, 1929, issued on behalf of the British Government an important declaration that the natural issue of India's constitutional progress was attainment of Dominion status.

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[1] Sir Sankaran Nair (*Gandhi and Anarchy*, 1924) strongly criticises O'Dwyer.

Lord Reading had held that the responsible government promised to India was different from Dominion status. To consider further reforms, the Simon Commission was appointed in 1927. It reported in 1930. It was sceptic about responsible government and, in the first volume of its report, it declared that "India is a land of minorities." The constitutional proposals which it framed in Volume II of its report were very conservative. Meanwhile, in 1928, the (Motilal) Nehru Committee chosen by an All-Parties Conference had recommended Dominion status.[1] A committee under Sir Harcourt Butler reported on the relations between the British government and the Indian states and suggested that the viceroy, and not the Governor-General, should be the agent of the crown in its relations with the states. The British government summoned a series of Round Table Conferences in the period 1930-33.[2] The Indian princes agreed to responsible government in the centre and an Indian federation with due maintenance of their rights. So, the British government had to agree to responsibility in the centre which the Simon Commission did not favour. On this basis, some proposals were framed. But the Round Table Conference failed to agree about communal representation and the British prime minister, Ramsay Macdonald, had to make an award in 1932 which recognized separate electorates for all minorities including Muslims, Anglo-Indians, Europeans, Indian Christians and Sikhs. The Muslims in Bengal and the Punjab, where they were in majority, were also given separate electorates. Muslim minorities, and the Sikhs and the Hindus of the Punjab received weightage. Depressed classes were given separate electorates ; but, this provision was modified later by the Poona Pact according to which seats were reserved for them in the general seats. The depressed classes would hold a primary election to choose candidates for each reserved seat and these would be the candidates for the seats.

The British Government sent out the Lothian Committee to consider about the franchise. Another committee considered relations with Indian states and another considered the question of finance.

In 1933, the conclusions of the British government were issued in a White Paper and were referred to a Joint Committee of parliament presided over by Lord Linlithgow. Delegates from British India and Indian states were summoned to give their views to this committee. In 1934, the committee issued its report and on it was based the Government of India Act of 1935.

In accordance with the report of the committee, Burma was separated from India. The rest (eleven provinces and the Indian states) were formed into a federation. The federation was different from other federations in that its power over its units was not

[1] The report favoured a federation more unitary than other federations. It urged the abolition of communal representation, but allowed reservation of seats in the legislature for Muslims.

[2] The proceedings of the conference are studied from opposite angles by Lord Meston (*India and the Simon Report*, 1930) and C. F. Andrews (*India and the Simon Report*, 1930).

uniform. Indian states were unwilling to relinquish their sovereignty completely. So, in each case, the instrument of accession was to be a matter of individual negotiation and would indicate the extent of federal powers over the state. Thus, the control of the federation over the Indian states would not be uniform. Their adhesion to the federation was also to be voluntary. The Indian states were also placed in a special position. They were given disproportionate representation on the basis of population in the federal legislature. Their representatives were to be nominees of the rulers, as personal rule continued in many states and the ruler himself was the federal executive power in the state. Large reservations were made for the benefit of the ruler. The states were not liable to contribute to federal finance except indirectly in customs ; yet cash contributions previously collected from them would be remitted.

Another curious feature of the federation was that the upper house and not the lower house of the federal legislature was to be elected. The joint select committee suggested indirect election for both ; but, the act provided for direct election to the upper house (which was called the Council of States). This Council of States was elected on a high franchise and, including state nominees, it would have been a reactionary body. Unlike as in the Act of 1919, now the upper house was given the power of voting even grants, though a money bill could originate only in the lower house. The lower house (Federal Assembly) was chosen by the provincial legislatures and also included state representatives.

While provincial autonomy was given, dyarchy was introduced in the centre by having counsellors for the three reserved subjects of defence, foreign policy, and ecclesiastical affairs. The viceroy combined three functions. He was (1) representative of the crown, (2) representative of the home government, (3) head of the government of India. Unlike the British Premier, he was subordinate to a foreign authority. Unlike the dominion Governor-General, he retained influence and power in the government. Further, he was given special powers. The joint parliamentary committee contemplated that these special powers should not be paper declarations, but to be fully exercised. As Keith remarks (*Constitutional History of India*), "Too narrowly interpreted, these might destroy the possibility of ministerial responsibility." The Governor-General could issue ordinances in matters which were in his discretion and even pass acts himself. He had the right to stop discussion of any bill in the legislature. Thus, he dominated the constitution. The non-votable items included salaries of the Governor-General, his ministers etc.— practically about 80% of the budget.

The financial system was already federal. Sir Richard Strachey in 1867 had already anticipated this development. The decentralisation scheme of Lord Mayo was intended to release the control of the centre on the provinces. There was continuous evolution since then. Lord Lytton transferred some items like land revenue, excise

etc., to the provinces in 1877. Under Lord Ripon, certain taxes like customs were imposed by the centre, certain taxes like land revenue were imposed by the provinces and some like excise were divided. The act of 1919 completely separated central and provincial finances.

The Federal Finance Sub-committee of the Round Table Conference (the Peel Committee) laid down the general principles which the Act of 1935 embodied. The centre surrendered more revenues to the provinces and had also to give subsidies to deficit provinces like the North-West Frontier, Sind, Bihar and Assam. Indian states should contribute a share to the federal expenditure, but could share in income tax and excise. All revenue derived from the federal legislative list (*e.g.*, customs) should go to the centre, and all revenue from the state legislative lists (*e.g.*, agriculture) should go to the provinces. Provinces were also given the right to levy succession duties and terminal taxes on railway and air traffic. They were given a share in income tax and salt duty. They were also given the power of borrowing inside India.[1] Sir Otto Niemeyer, who was asked to investigate financial relations between the centre and the provinces, made his award in 1936. Provinces were allowed 50% or a major part of income tax after a period of years when the income tax and railway contribution were expected to bring the centre thirteen crores. But this arrangement was upset by the Second World War which increased the expenditure of the centre. The units were to be the governor's provinces in British India and such Indian states as wished to accede to the federation. It was laid down that rulers of states, representing at least half the aggregate population of the states and entitled to at least half the seats in the federal upper house, must join before the federation could be set up.

The act made a division between federal and provincial subjects. But the Governor General was empowered to assign items which were not distributed, and hence residuary power rested with him.

The legislative procedure was as follows. Before a bill could be introduced, the previous consent of the Governor-General should be obtained. if it dealt with any matter requiring such consent. After being formally introduced and published in the gazette, there followed the first reading—a general discussion of the principle of the bill. Then it might be referred to a select committee or taken up for second reading, when it is considered clause by clause. In the third reading, there was no discussion ; but verbal or grammatical amendments could be made. Legislation was subject to the powers of veto, disallowance, certification and restoration exercised by the Governor-General or the governor.

[1] Dr. P. J. Thomas (*The Growth of Federal Finance*) warned against undue reaction from the old financial centralisation and pleaded for a combination of the new financial policy with a new economic policy based on planning.

Federation is necessary for India because of its vast size, variety of population, language and customs and diversified conditions in the different areas. But, one danger is that disruptive forces of religion and language are very strong. So, a federation like that of U.S.A. would encourage particularist forces. Fortunately, there has been no tradition of autonomous provinces, as these were all artificial and there had been no pact between the provinces and the centre as to how much should be yielded by the provinces. The government in the past had been one. The provinces assumed their present form under historical forces, languages and religions being mixed. In spite of differences, there has been produced a certain uniformity of life and culture. Though there are many religions, there is a tradition of tolerance. In spite of many languages, a common language was found in English and later in Hindi. The British have created a tradition of common rule, uniform administrative institutions and laws and an economic unity through railway communications and trade. India is a geographical unit. Unity is also necessitated by considerations of defence. So, the ideal of federation aimed at in the act of 1935 is not wrong. It is the particular form of federation proposed in the act which is open to the gravest objections, It may also be noted that, unlike other federations, this new federation of India was to mean the breaking up of a unitary country into autonomous units.

In the past, the Secretary of State and the Government of India held complete control over the provinces which were simply treated as their agents. So, there was only decentralisation and devolution. Lord Minto began a policy of decentralisation. The Royal Commission on Decentralisation in his time did not recommend any substantial freedom to provinces, though it stressed the importance of local self-government. Lord Hardinge still emphasised in 1911 that the ultimate supremacy of the Government of India was the essential basis of British rule. Still the removal of the capital to Delhi in 1911 emphasised that the Government of India should not be associated with any particular provincial government.

While the earlier schemes of decentralisation were due to the need for administrative efficiency, later schemes were also meant as concessions to public agitation. The Montagu-Chelmsford Report visualised the ideal of a federation including the Indian states and the act of 1919 demarcated a division of central, provincial and concurrent lists. Dr. Bhisheswar Prasad (*Origins of Provincial Autonomy*) traces how pro.inces, which were completely subordinate to the centre came to have a limited autonomy by 1919. Still, the need for the previous consent of the Government of India for provincial measures was needed, though interference was to be limited in "transferred" subjects. The act of 1935 frankly accepted federation.

Two houses were set up in six provinces. But, unlike the federal Council of States, the provincial second chambers had no power of voting on grants. Deadlocks would be solved by joint

sittings. The legislatures were given power to fix the salaries of the ministers. But, once they were fixed, they could be varied during their term of office and need not be submitted to the vote of the assembly. Contrast the act of 1919. As Keith points out (*Constitutional History of India*), this device was meant to secure that the crown might not be forced to do without ministers through the refusal of the legislature to vote adequate salaries. Unlike the centre where the number of ministers were fixed at ten, here no limit was placed. Restrictions on provincial autonomy consisted in the necessity of the previous sanction of the Governor-General regarding several bills. The Governor-General might issue special instructions to the governor to exercise power to prevent danger to peace and tranquillity. The governors also had special powers to pass laws, and impose taxes without the consent of the legislature and carry on the government with advisers in case of a breakdown of the constitution. Mr. Fazlul Huq, Premier of Bengal, complained that his advice on several matters had been ignored by the governor, particularly in matters coming under the Defence of India Act. The premier of Sind, Alla Bux, was dismissed in 1942 by the governor under the direction of the viceroy for expressing sentiments sympathetic to the Congress which was then in opposition.

Aden was separated from India in 1937 and made a Crown Colony. The council of the Secretary of State for India was abolished. But he was provided with eight advisers.

By this Act, more than 500 autocracies ruled by Indian princes were linked up with the eleven provinces of British India which were under democratic governments. Joshi (*Indian Administration*) thinks that it is doubtful how far this new policy could be called a federation in the usual sense. Like the German Federation before 1918, the regions were unequally represented in accordance with their population and resources. There was no double citizenship as federal and state citizens, because subjects of the Indian states were not citizens of the Indian federation. Chintamani and Masani (*Indian Constitution at Work*) calls it " a scheme which is a combination of the drawbacks of different systems". Keith (*Constitutional History of India*) sums up its defects and considers that it is difficult to deny the charge that the British brought an element of pure conservatism in the Indian states to combat any dangerous element of democracy contributed by British India. Sir Shafaat Ahmad Khan (*The New Constitution and After*), while commending certain features like proportion of state representation, composition of federal legislature and financial adjustment between the centre and the units, wanted transfer of departments like defence to popular control and the vesting of residuary power in units. Sir Bijay Prasad Singh Roy (*Parliamentary Government in India*) finds nothing to commend in the scheme. He considers that democracy was restricted by the control of the British government over the Government of India and favours complete transfer of power. He considers that the political parties had now no responsibility in helping the government. While the

majority parties were obstinate, minorities tried to defy the decision of the electorate. K. T. Shah (*Federal Structure*) urges that the Secretary of State still stood out as the most dominant part of the constitution. The constitution was not drafted by the people, but imposed by the British government. Constitutional amendments could be made only through the British parliament.

The federation contemplated was never brought about, but the provincial part of the act was put into force in 1937. The Congress secured power in the elections in six provinces and formed ministries, after getting an assurance that the powers of the governors would only be reserve powers. Coupland (*Indian Politics, 1936-1942*) had critically analysed the working of provincial autonomy. Though Coupland accused the Congress of totalitarianism, he was impressed by the good record of administration and the capacity of the government to maintain law and order. In 1939, the viceroy, Lord Linlithgow, admitted that the provincial ministries had conducted their affairs with great success.

The act provided for the federal legislature making laws for the provinces in emergencies like wars, but failed to provide for similar executive control. Hence, an amending act of 1939 gave the central government powers of control and co-ordination over provincial governments is emergencies. World War II broke out in 1939. In 1941, the British parliament gave power to the Governor-General and the governors to extend the life of the Indian legislatures till one year after the end of the war. The ordinances issued by the viceroy were to extend beyond six months. Following the example in Britain, legislators in the central legislature were not disqualified from sitting in the legislature because they accepted place of profit under the crown. The Government of India was invested with wider powers so as to eliminate the need for getting orders in council from Whitehall, as communications might be delayed. In 1944, an amendment removed the provision that the viceroy and the commander-in-chief could be granted leave of absence only once in their period of office so as to allow them to leave India for short visits to other places. The advisers of the Secretary of State were reduced in number from eight to five. All this was purely emergency legislation due to the war.

With the outbreak of the war, the Congress again went into opposition. The Congress demanded a constituent assembly to draw up a constitution and opposed the federation contemplated by the act. The Muslim League also opposed the federal part of the act on the ground that it made the Muslims a hopeless minority, as the majority of even the Indian states were Hindus. Jinnah, leader of the Muslim League, held that the Muslims were a separate nation and democracy based upon majority rule could not work in India. In the face of this opposition, the British Government, finding that even the Indian states had also become more reluctant to join the federation, had to suspend the federal scheme in 1939 and promise a reconsideration of the whole scheme after the war. The viceroy,

in January 1940, affirmed that the Dominion status envisaged for India was of the pattern laid down by the Statute of Westminster. This status would be granted after the war when a new constitution would be drafted by the Indians themselves, "subject to the fulfilment of obligations imposed by the long connection of India with Britain and subject to the acceptance of the constitution by the powerful elements in the national life of India."

In 1941, the Viceroy increased the number of his executive councillors from seven to twelve including the commander-in-chief. While there were only three Indians before, now there were seven. A National Defence Council representing different interests in British India and the Indian states was also set up. In 1942, the executive council was expanded to fifteen, representation being given to the Sikhs, depressed classes and non-official Europeans. In this council, eleven were Indians. One was a non-official European and the other three were European officials, including the commander-in-chief.

All these measures did not satisfy the Congress. The Muslim League also adopted the demand for setting up an independent Muslim State called Pakistan. This expression was held to mean the initial letters of the Punjab, Afghan (or North-West Frontier Provinces), Kashmir, Ind (or Sind) and Stan (or Baluchistan) But, some others explained the expression as meaning the "land of the pure." In 1942, a Muslim League ministry was formed in Sind and, in 1943, in Bengal and the North-West Frontier Provinces. Coupland remarks that material considerations are not always the decisive factor in national policy and that, when the mind of a people is obsessed with the single idea of obtaining its complete freedom, no price seems too high to pay for it. Thus, the demand for Pakistan became emotional. Coupland ascribes this to a complex of pride about past rule and fear for the future.

The difficult political situation in India gave rise to a good deal of discussion. Coupland suggested (*India—a Restatement*) a threefold tier of provinces, groups of provinces and a centre. In the provinces, communal representation should be extended to the executive and the services. Central control should be confined to defence, communications, foreign policy, customs and currency. Sir George Schuster and Guy Wint (*India and Democracy*) held that parliamentary democracy of the pattern of the Statute of Westminster would not suit India and that India would have to search out for a different system. Her defence and destiny demanded her continuance in the Commonwealth.

The Atlantic Charter of August 1941 recognised the right of the people to decide their own government. But, Churchill, the prime minister of England, declared in parliament in September, 1941, that this axiom would not interfere with the "progressive evolution of self-governing institutions in the regions and peoples which owe allegiance to the British Crown". This made the promise contained in the charter illusory so far as India was concerned.

In 1942, Sir Stafford Cripps visited India with proposals from the British government to create a dominion after the war called the Indian Union. Its constitution would be prepared by a constituent assembly. But, any province would have the right not to accede and to form a separate dominion. The new dominion or dominions would be free to remain in the Commonwealth or not and to make treaties with the British government. For the present, all departments would be transferred to popular control except defence. The Congress objected to the scheme on the grounds that, (1) the states would be represented by nominees of the rulers in the constituent assembly and this provision was undemocratic ; (2) the right of non-accession given to a province might destroy the unity of the country. The League objected that the scheme did not create Pakistan straightaway. The Congress was, however, willing to agree to a short-term arrangement of a War Government, if responsible government was given. Negotiations broke down on the question whether this War Government would be a real national cabinet with the Governor-General functioning as a mere constitutional head. After this, the Congress began agitation demanding the end of British rule. In 1945, the Sapru Committee made an effort to provide a solution by suggesting an Indian Union in which provinces would have no right of secession and communal electorates would be abolished. But safeguards would be provided for minorities and parity would be set up between the Muslims and the Hindus in the centre. This plan also was not accepted. The viceroy, Lord Wavell, put forward a plan (1944) according to which the executive council, except for the viceroy and the commander-in-chief, would be completely Indian and would include equal proportions of Muslims and Hindus The viceroy would be in charge of matters dealing with Indian states and commander-in-chief, war. The other members of the council would be political leaders recommended by a conference summoned by the viceroy. This plan also failed owing to lack of agreement amongst the political parties. In 1945, he put forward a fresh scheme after consultation with the Labour Government of Attlee which had come into power in England. According to this, general elections would be held. Then a constituent assembly would meet and the executive council would be reconstituted. Accordingly, fresh elections were held and the Congress was returned to power in eight provinces. A law of 1946 passed by the British parliament allowed all seats in the executive council to be filled by Indian non-officials and, in this, the various political parties received representation. The constituent assembly also met. But the Muslim League boycotted it, and the position remained tense. A delegation of the British cabinet of three members under Lord Pethick-Lawrence, the Secretary of State, came to India and suggested a plan in 1946 based on the proposals of Cripps and Coupland with some modifications. But this plan also could not find acceptance. Finally, the British government decided to quit India by a certain date and sent out Lord Mountbatten as the viceroy to carry out the necessary arrangements. Under the urgency of this situation, the viceroy induced the political parties to

agree with the result that Pakistan was constituted into a separate state including West Punjab, North-West Frontier Provinces, Baluchistan, Sind and East Bengal. Pakistan and the rest of India became two separate dominions with responsible governments and the constitutions in both were to be drafted by constituent assemblies in both dominions.

The interim government which functioned from September, 1946, till August 14, 1947 had the viceroy as its president ; but Mr. Nehru was its vice-president. Regarding its importance, Palande remarks, "The formation of such a government was an epoch-making stage in India's political history. It amounted to an abeyance of the authority of foreign rulers in all objects of government including external affairs and defence and an assurance of the transfer of that authority into Indian hands".[1]

The constituent assembly of India, which met in December, 1946, completed the preparation of a draft constitution by February, 1948. It was adopted in November and came into force on January 26, 1950. The constitution is a long and complex document. The constitution has borrowed features from different sources *e.g.*, the directive principles of state policy in it are based on a similar feature in the constitution of the Spanish republic which functioned before Franco set up his power. But many of its ideas like the rule of law, judicial review and responsible government are British. As Basu remarks,[2] three-fourths are based on the Government of India Act of 1935. The conception of fundamental rights is based on the constitutions of the United States and Ireland and the fedral features on that of Canada. Part I, consisting of the first four articles, deals with the territory of the Union. Part II (articles 5-10) deals with citizenship. Part III (articles 12-35) deals with fundamental rights. These have been modified by later amendments in 1951 and 1955. Part IV (articles 36-51) deals with the directive principles of state policy. Article 51 dealing with promotion of international peace may be compared with a similar provision in the constitution of the Fourth French Republic. Part V deals with the executive of the Union (articles 52-78), the legislature of the Union (articles 79-123) and the judiciary of the Union (articles 124-147). The constituent states are classified in the first schedule and Part VI deals with the Part A States and the succeeding parts with the other states. The strength of the legislatures were fixed later by the Representation of the People Act of 1950. Part XI deals with the division of powers between the centre and the units. Part XIV deals with the services. The election commission, set up by Part XV to look after elections, is a unique feature of the constitution. Article 370 in Part XXI makes a special provision for Kashmir. This was later altered to provide for an elected head of the state which the

[1] *Introduction to Indian Administration*, 1951, p. 40.

[2] *Commentary on the Constitution of India*, 1952. Campbell-Johnson. (*Mission with Mountbatten*, 1951) gives an interesting account of the events of the period.

state government desired. The list of Union subjects comprise ninety-seven heads ; the list of state subjects, sixty-six and concurrent subjects, forty-seven. Contrast the corresponding lists in the Government of India Act of 1935 (59, 5 , and 36).

Before proceeding further, it is necessary to see how Free India solved the difficult problem of the princely states.

Lee-Warner defines an Indian state as "a political community occupying a territory in India of defined boundaries and subject to a common and responsible ruler who has actually enjoyed and exercised, as belonging to him in his own right, duly recognized by the supreme authority of the British Government, any of the functions and attributes of internal sovereignty." Lee-Warner calls the period 1763 to 1813 as that of the "ring-fence". The Company kept to itself, not bothering about what happened beyond its "ring fence." Pitt's India Act contained a clause against schemes of conquest. Both the Company and the parliament agreed about this. Thus, after the battle of Plassey, Bengal was not annexed. After the battle of Buxar, Oudh was not taken. Cornwallis entered on the Mysore War only as a necessary operation compelled on him. Wellesley reversed the policy of help in subsidies adopted by Pitt towards the allies of England in the Seven Years' War and offered defence to Indian princes in return for subsidies. When these subsidies became irregular in payment, assignment of territory followed. Thus, the Company not only increased its army at the expense of the princes, but kept large numbers of it in the very heart of their territories. These subsidiary treaties of Wellesley entailed interference, therefore, in practice. Wellesley was criticised for departing from the old policy. Lord Minto came as his opponent, but had also to depart from non-intervention.

The next stage of Lee Warner extending from 1813 to 1857 is called by him the period of "subordinate isolation". Now, treaties regarded the states not as equals as before, for instance in the Tripatrite Treaty against Tippu in 1790. The Indian powers are treated as subordinates But, even now, while the Company looked after external defence and guaranteed internal sovereignty, it avoided internal interference. Lord Hastings failed to include a provision for internal interference in his subsidiary treaties. Hence, internal abuses flourished. The equal alliances postulated by the old treaties were now sham, as the British were really supreme. Direct relations between the states were not allowed. The British dealt with each state separately, and states could communicate with each other only through the British power. Thus Hastings developed the policy of Wellesley.

The next stage of Lee-Warner, the period from 1857 to 190', is called by him as the stage of "subordinate union and co-operation". The sanads of Canning guaranteed the validity of adoption by Indian princes. Many English officials held that people would accept changes more readily, if they came from their own rulers than from a

foreign administration and thought that Indian States would also provide opportunities to Indians to develop their own administrative abilities. The Indian princes, now assured of their position, became loyal to the British Crown. They were encouraged to feel that they occupied a position of special honour and invited to co-operate with the British Government. Dodwell remarks, "If the Indian princes lost their status as separate and individual sovereigns, they became subordinate but permanent members of the Empire. Annexation was the only point in which the crown receded from the position of the Company. In all other matters, it accepted and developed the position to which it succeeded." Railways, roads, posts and telegraphs united the states and British India. The policy of isolation maintained to prevent hostile leagues was relaxed. The permission given to princes to raise Imperial Service Troops in Lord Dufferin's time shows this changed attitude. It gave opportunity to larger states to participate in defence. In 1901, Lord Curzon set up the Imperial Cadet Corps to give military training for the cadets of princely and noble families. Thus the princes were encouraged to feel that they occupied a position of special honour.

From 1906 began the period which Volume V of the *Cambridge History of India* calls the period of "co-operative partnership". The need for some arrangement for the princes to express their views had induced Lord Lytton to favour the formation of an Indian Privy Council consisting of a council of the greater chiefs to consult with the viceroy on important matters. But this scheme was rejected in England as too risky. Later Minto and Hardinge began a policy of collective consultation by holding Chiefs' Conferences. George V, in the Delhi Durbar of 1911, announced the remission of Nazarana (succession duties) from the princes. Imperial Conferences held during World War I included Indian princes who were also represented in the League of Nations with other representatives of India. The Act of 1919 set up the Chamber of Princes for consultation. All important states were now placed in direct contact with the Government of India. The Chamber of Princes consisted of rulers of important states and representatives from lesser states. It elected its own chancellor and met every year from 1921 under the presidency of the viceroy. There was no interference in internal matters and only common matters were considered. But some important states refused to participate in the chamber. The Butler Committee reporting in Lord Irwin's time suggested that the viceroy, and not the Governor-General, should be the agent of the crown in its relation to the Indian states, as representative of the King-Emperor. This theory was accepted by the Act of 1935 when it set up the federation of India.

A political relationship developed which was not embodied in a definite Constitution but had grown up under widely different conditions. This relationship called Paramountcy was the result of political, social and economic circumstances. It was seen in the suzerainty of the British crown over the Indian states and its power

to decide dynastic succession and disputes, to arrange for administration during minorities and to intervene in case of misrule or rebellion. This paramountcy, which did not rest on any written document, also committed the Indian states with regard to the decisions taken by the paramount power regarding national and international matters. Political practice even superseded or modified treaties. The obligation of the Paramount Power was extended to mean not only the protection of the ruler against disorder but also the offer of help and advice to him to remedy legitimate grievances. In the time of Northbrook, we have the outstanding case of Malhar Rao Gaekwar who was tried on a charge of attempted poisoning of the British Resident. He was tried by a judicial tribunal including Indian princes. It was the first use of this procedure to try a ruling chief. He was deposed in 1876. Lord Curzon was too ready to interfere. When Hyderadad was in serious financial difficulties, he induced the Nizam to allow its contingent to be absorbed in the Indian army and lease permanently to the Government of India the province of Berar, in return, the Nizam being paid rupees twenty-five lakhs per year as rent. Berar, thus secured under the fiction of a perpetual lease, was made a part of the Central Provinces. It was only in 1936 that an agreement was made admitting the Nizam's sovereignty over Berar, his heir-apparent being called the Prince of Berar, and the Nizam's flag being flown in Berar. But the administration was to be part and parcel of that of the central provinces.

Lord Reading in a letter to the Nizam in 1926 urged that the sovereignty of the British Crown was supreme and that no Indian prince could claim to negotiate with it on an equal footing. This supremacy was based not only on treaties, but existed independently of them. So, the British government would interfere when necessary in internal affairs Lord Reading interfered in the case of Nabha in 1925 and of Tukoji Rao Holkar in 1926. The Indian States Committee refused to accept the theory put forward by the princes that relationship between the state and the crown was a contractual relationship involving certain definite rights and obligations beyond which the Paramount Power could not go. Some like Mr. Panikkar argued that the states were "laboratories of social experiments" and that the princes were "a major aristocracy which never failed India in any important matter." In his *An Introduction to the Study of the Relations of the Indian States with the Government of India*, he argued that the rights of the states had been whittled down in course of time by interpretation and political usage. Captain Haskar, who collaborated with Mr. Panikkar in writing *Federal India*, though favouring Dominion status for British India, was biassed in favour of the states. Mr. Panikkar held that paramountcy was definite in scope and could not extend beyond the powers granted by treaties and that usage by itself could not be the source of fresh powers for the British government. He held also that the states were not creations of British policy.

On the other hand, Edward Thompson (*The Making of the*

Indian States, 1944) showed, by a historical approach, that "Indian princes were not an impressive survival from antiquity entitled to veneration." When the British set them up again, they had become completely weak and derelict and there had been all along abundant interference in their affairs. Mr. Varadachariar (*Indian States and Federation*)[1] disputed the views of Haksar and Panikkar, urged that paramount power has overridden even treaties when necessary and believed that paramountcy should be restricted only if the states enjoyed responsible government. The Indian States Committee (Butler Committee) held in 1929 that no state held fully sovereignty at any time, being subject to the Mughal Empire, Mahratta power or the Sikh power and some were created by the British.

The states had no independent existence in International Law. Westlake thinks that their relations with the British Government shifted from an international to an imperial basis. Keith held that the relations were neither international nor municipal. Mr. Ruthnaswamy points out that this relationship was moulded by widely different circumstances and was unique. It changed from a basis of alliance between independent sovereigns to Paramountcy with its indefinite powers of intervention. The states were not affected by the laws of British India and were not considered British territory ; but the Paramount Power had the duty of protecting their subjects abroad. A judgment of the Lahore High Court (1940) declared that these were not merely state subjects as held till now but British subjects owing allegiance to the King-Emperor.[2]

The British government's control was thus summarised by Ilbert : (1) exclusive control over foreign policy, (2) a general, but limited, responsibility for the territorial integrity of the state and its internal order, (3) special responsibility for the safety and welfare of British subjects resident in the state, and (4) subordinate co-operation in the task of resisting foreign aggression and internal disorder. This relationship was not legal and not embodied in a definite constitution. About forty of the larger states had treaties. A large number had only *sanads* (grants of powers). Even the treaties were called so only by courtesy, for they were not subject to international law. Their interpretation and administration were according to the will of the British government. The treaties were modified and superseded by later political usage. This case law developed by the political department was more powerful than the original treaty. Dodwell points out that the loyalty of the princes to the British Crown was not imposed by treaties but developed by constructive interpretation. Again, Paramountcy that developed was more important than treaties. Lord Curzon declared in 1903 that Paramountcy was

[1] A course of three lectures delivered in the Madras University. See also article by Mr. Sastri on the sovereignty of Indian states in the *Calcutta Review*, Nov. 1937.

[2] The Indian States Committee held that the states were *sui generis* and there was no parallel to their position in history. They fell outside both international law and municipal law.

unchallenged though it had, of own accord, laid down its limitations. Paramountcy was a unique growth, based essentially on force, and it had been used, as claimed by Lord Chelmsford, for the benefit of all India including that of the people of the states. Westlake held that Paramountcy was indefinable, as it changed according to circumstances. The Butler Committee which agreed with this view held that "Paramountcy must remain paramount." This included power to recognise succession, approve of ministers, right to depose princes, right of control during periods of minority, sanction of adoption, decision of disputed succession, decision of inter-state disputes and intervention in misrule.

According to the act of 1935, Paramountcy did not come into the federal field and, so, could not be judged by the Federal Court. It recognised, however, that it would not apply to subjects on which the states agreed to federate. These discussions on Paramountcy have now become simply academic with the integration of the states in the Indian Union.

There were 562 states of which only fifteen were important. The proportions in which sovereignty was divided with the British government depended on the history and importance of the state and was regulated partly by treaties or sanads and partly by usage. Maximum sovereignty was enjoyed by the Nizam who coined his own money, taxed his subjects and inflicted death penalty without appeal. The minimum sovereignty was possessed by a Chief in Kathiawar who exercised very slender political authority and was exempt from British taxation. Lee-Warner called these states "semi-sovereign" for they had no independent status in international law but were also free from the laws of the Indian Legislature or parliament. Foreign affairs and defence were with the Government of India. The British government guaranteed security against foreign danger, internal autonomy except in case of misrule, a share in the benefits of post, railways and commerce and political equality with the citizens of British India. In important states, the Government of India was represented by Residents and there were Political Agents in the smaller states. Internally, the will of the ruler was supreme, even though councils or assemblies existed. Often, the system of law and education was copied from British India. Usually, there were ministers headed by a Dewan. But, the constitution depended on the will of the ruler and, in some cases, there was no civil liberty. The states varied in size, population and revenues. They could not enter into diplomatic relations with each other or the outside world. They could not employ foreigners without consent of the British government. Inter-state disputes should be solved by the mediation of the Government of India which also granted sanads of succession or adoption. There were restrictions on the armed forces of states. The Government of India would interfere when the ruler was a minor and when there was misrule. The Paramount Power also advised the princes about necessary improvements. Lord Linlithgow in 1939 not only advised the princes to move with the times but appealed to the

smaller states also to combine in the matter of administrative services. In 1940, the Government of India favoured the establishment of common high courts for many small states and urged the importance of impartial judiciary, and a fixed civil list. Many states were induced to adopt the laws of British India and copy its administrative institutions. Even Mr. Panikkar favoured a "co-operative grouping of smaller states" which were geographically contiguous for common purposes.

Some states like Baroda developed in education and social reform. States like Mysore advanced in economic development. Hyderabad fostered Urdu literature and culture. Harijan temple entry was permitted in Travancore in 1936, a reform which preceded any similar step in British India. The old idea of a full treasury gave place to the modern ideas of public finance, and regular budgets began in several states. But real progress was impossible so long as the principle of autocracy was supreme in the government.

Progress has been mainly in two directions after independence. Responsible government has spread in the states. There has been further integration of states. In some cases, there has been the merger of existing units with the old provinces. Thus, thirty-nine states in Orissa and Chatisgarh were divided between Orissa and Central Provinces (Madhya Pradesh) by December, 1947. By March, 1948, seventeen states in the Deccan were merged with Bombay. In May, next year, Baroda was absorbed in Bombay. Between 1948 and 1949, a few small states were absorbed in the Punjab. Cooch Bihar was added to West Bengal ; some states like Banaras, Rampur and Tehri-Garhwal went to Uttar Pradesh and Madras got the states of Pudukottah, Sandur and Banganapalli. Twenty-five states of the Khasi Hills were added to Assam, but, because there were hill tribes here, they were formed into an autonomous area within Assam ; 449 small states were consolidated into the union called Saurashtra, one of the princes becoming the Rajpramukh ; twenty states were merged into a union called Madhya Bharat, the rulers electing a Rajpramukh. Eight states formed the Patiala and East Punjab States Union (Pepsu). Eighteen states were united in the union of Rajasthan. While these unions took effect in 1948, in 1949 Travancore and Cochin were joined into one state.

In some cases, states were taken over by the centre itself. Twenty-one states of the East Punjab were formed in 1948 into a new state called Himachal Pradesh. The Vindhya Pradesh, in 1948, was a union of thirty-five states of Bundelkhand and Bhagelkhand. The other states taken over were Kutch (which became a chief commissioner's state in 1948), (Bilaspur taken over in 1948 and which has ceased to exist now,[1] in consequence of its being situated in the headworks of the Bhakra-Nangal irrigation project), Bhopal (taken over in 1949), Tripura (taken over in 1949), and Manipur (also in 1949).

[1] It is merged in Himachal Pradesh.

In place of over 550 states which existed before, there are now only thirteen. Even amongst these, only Mysore, Hyderabad and Kashmir retain their original shape. In 1950, the centre assumed control of the states' fighting forces, their postal systems and income tax in the states.

THE NEW CONSTITUTION

India (called also Bharat) is a Union of States consisting of four kinds : (A) former governors' provinces, (B) former princely states or Unions of such states, (C) those which more or less correspond in position and status to the former Chief Commissioner's provinces, and (D) Andamans and Nicobars. The following are the States coming under Part A :—

1. Assam
2. Bihar
3. Bombay
4. Madhya Pradesh
5. Madras
6. Orissa
7. Punjab
8. Uttar Pradesh
9. West Bengal
10. Andhra

The pattern of government in the states is the same as in the Union *viz.*, parliamentary responsible government. The constitution has established in the states also the same system of democratic responsible government of the British type. There are only minor differences between the governments in Part A states and those in other kinds of states. Apart from these minor differences, the system of government is practically the same in all the states.

The following are the States coming under Part B :—

1. Hyderabad
2. Madhya Bharat
3. Mysore
4. Patiala and East Punjab State Union (Pepsu)
5. Rajasthan
6. Saurashtra
7. Travancore-Cochin

The forms of government is generally similar to that of Part A States, except in the following particulars. Instead of a Governor being the head of the State, one of the old ruling princes called by the title of Rajpramukh is the head ; but he occupies the same constitutional status as the Governor. The States of Madhya Bharat, Rajasthan, and Saurashtra have also an Uprajpramukh who officiates as the head of the state in the absence of the Rajpramukh. According to Art. 371, for a period of ten years, the President is empowered to exercise greater control over these B group States through Advisers appointed by him. This provision, meant purely to tone up the administrative level of these States, has not been applied to States already administratively advanced like Mysore.

The following are the States coming under Part C :—

1. Ajmer
2. Bhopal
3. Coorg
4. Himachal Pradesh
5. Delhi
6. Kutch
7. Manipur
8. Tripura
9. Vindhya Pradesh

These are under Lieutenant-Governors or Chief Commissioners. Though the control of the centre is greater here, elected legislatures and responsible government have been set up here also.

Part D Territories comprising the Andamans and the Nicobars are administered by the President through special officers (Art. 243).

The State of Jammu and Kashmir is in a special position. Though the state has acceded to India, this accession is disputed by Pakistan and the matter is still under discussion between the two states.

The former French Settlements have passed to Indian control as the result of peaceful negotiation. Chandernagore has been merged with West Bengal. The settlements in the south, collectively called the Pondicherry State, are administered as a separate unit till the question of their final reorganisation is settled.

The *Main Features of the Indian Constitution* can be enumerated as follows :--

1. It is the product of our Indian genius. We framed the new Constitution after laborious debates and discussions lasting for nearly three years (two years, eleven months and eighteen days). Thus we have the supreme satisfaction that our Constitution has been framed by our own great leaders taking into consideration the peculiar conditions and circumstances prevailing in our country.

2. Like the constitutions of the big powers of the world, with the exception of Great Britain, the Indian constitution is a written one. It is embodied in a comprehensive constitutional document called "The Constitution of India".

3. It is the longest, biggest and most voluminous written constitution in the whole world ever framed for a free country. It consists of twenty-two parts, 395 articles and nine schedules, and runs over 252 octavo pages, giving a superficial observer the impression that it is a book or manual of detailed instructions on the Government of India. Except in a few respects, it follows closely the Government of India Act of 1935 not only in language and substance, but also in the general scheme and arrangement of the provisions under different heads. Like the Government of India Act of 1935, it is a masterpiece of draftsmanship in one sense of the term. In fact the new constitution may be described as the working constitution under the Government of India Act of 1935 with the minimum but fundamental and in certain respects, far-reaching changes and modifications made to fit in with the present states of India, as a free and independent country.

Many factors have contributed to make the constitution unduly long, elaborate, most detailed and highly complicated. It is based largely on the Government of India Act of 1935 which was probably the longest Act ever passed by the British Parliament. It contains

not only the constitution of the Indian Union, but also the different kinds of states—Part A, B, C, and D states, which were in different stages of development. The incorporation of a chapter on Fundamental Rights, and another on Directive Principles of State Policy, have also added to its length. It also contains a number of special provisions for the protection of the Anglo-Indians, Scheduled Castes and Scheduled Tribes, Property, Contracts and Suits, Elections, Languages, Public Service Commission as well as temporary and transitional provisions many of which could have been better dealt with by ordinary laws. Further, the fathers of the constitution were anxious to make it fool-proof, if possible, by exhausting all possible and even imaginary circumstances under which governmental power might be abused or disused ; and therefore they chose to provide for all possible contingencies, and hence many articles with numerous clauses and conditions with many provisos, with a view to making the constitution completely free from some of the glaring defects which have manifested themselves in the actual working of the constitutions of other countries.

In this connection, it is worth remembering that the constitution of the U.S.A. is about the shortest document providing for a federal form of government. It is a model of brief, elegant, and in some places artfully ambiguous draftsmanship. It consists of seven clauses to which twenty-two amendments, most of them very short, have been added, in the course of more than a century and a half. Including the amendments, it runs over about twenty pages. It is interesting to note that even among the constitutions after 1945, our constitution is undoubtedly the longest of them all. The constitution of the Fourth French Republic of 1946 consist of 106 articles and covers about twenty-five pages. The constitution of the Italian Republic of 1947 consists of 139 articles and runs over thirty-five pages. The constitution of the Federal Republic of Germany of 1949 consists of 141 articles and covers about forty-five pages.

This unprecedentedly lengthy and complicated nature of the Indian Constitution has formed the subject of serious, but yet deserving, criticism at the hands of many constitutional pandits. Dr. Jennings, the greatest living constitutional lawyer of the day, has drawn our attention to this feature of our constitution and, among the many reasons for it, he assigns the place of pride to the fact that the framers of the Indian constitution did not make any distinction between a fundamental law and an ordinary law. He observes that the framers did not seriously consider what rules ought to be enacted as fundamental law and what as ordinary law. "It seems that the Constituent Assembly did not seriously address itself to the task. It asked itself a different question : What rules are desirable in independent India ?" This criticism of Dr. Jennings deserves our careful attention because he points out that many unimportant things have been incorporated in the constitution, while a number of fundamental matters have been omitted.

4. Though the new constitution is to a large extent based upon the Government of India Act of 1935, and has borrowed most of the features from it, its departures from it are no less remarkable, and significant. The republican form of government, the independence of parliament from any kind of external control, the complete responsibility of the executive to the legislature, the inclusion of the princely states and the provinces within the same constitutional framework, and the adoption of the same democratic form of government to both alike, the definition of citizenship, the incorporation of the fundamental rights of citizens, the declaration of the Directive Principles of State Policy, the abolition of separate electorates and the introduction of universal adult suffrage, the vesting of the residuary powers in the federal government, the power of the Union Parliament to amend the constitution excepting some specified provisions, which require, in addition, the consent of at least half the legislatures of the autonomous states are some of the features in which the new constitution differs from the Act of 1935, and whose importance cannot be easily overlooked.

5. The Preamble to the Indian constitution which embodies the highest and the noblest ideals of justice, liberty, and of fraternity is undoubtedly the grandest among the preambles attached to written constitutions in the whole world. It runs thus :—

"*We, the people of India,* having solemnly resolved to constitute India into a *Sovereign Democratic Republic* and to secure to all its citizens

"*Justice,* social, economic and political ;

"*Liberty* of thought, expression, belief, faith and worship ;

"*Equality* of status and of opportunity ; and to promote among them all ;

"*Fraternity* assuring the dignity of the individual and the unity of the Nation :

In our Constituent Assembly this twenty-sixth day of November, 1949, do *hereby adopt, enact and give to ourselves this constitution.*"

It sets forth briefly the aims or the objects that it seeks to achieve. Though strictly speaking, the Preamble does not form an integral part of the constitution proper, and though it has no legal sanction or force, yet it is not a meaningless or useless part of the constitution. It states the general fundamental principles on which the constitution is based. It also indicates the source, the sanction, the pattern, the objects and the content of the constitution. The very first line of the Preamble states clearly that the constitution originates from the people of India and that political power and ultimate sovereignty resides in the people of India as a whole and that all governments derive their power and authority from them. It reflects the ideals and aspirations of the people towards freedom and

better and richer life for the common men. The emphasis on "We the people of India" indicates the democratic basis of the constitution in a land till recently a land of princes. The Preamble of the constitutions of the U.S.A., Australia, France, Republican Italy, and that of Western Germany, also emphasise the sovereignty of the people. In particular, there is a striking similarity between our Preamble and that of the U.S.A. which runs thus :—

"*We the people* of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

It is significant that, while the American Preamble mentions practical objectives to be achieved by the constitution ours combines objectives with idealism. It must be noted that in the Indian Preamble there is no mention of the term ' General welfare". Probably, the framers of the constitution might have assumed that, if the objects specified therein were achieved, they would secure general welfare.

The Preamble describes India as a Sovereign Democratic Republic. All the three words are full of significance. The expression sovereign signifies that India is fully and completely free and independent from all external control and that she is now the master of her own destiny both at home and abroad. The Indian State has both internal and external sovereignty ; only the latter is limited by Article 51 of the constitution which recognises the extreme importance and urgency of building up international peace and security.

The word "Democratic" signifies that the rule of princes and potentiates has come to an end and that government in this country must be carried on only by the elected representatives of the people. It is also a standing proof of the rise to prominence of democratic ideas and ideals as well as recognition of the importance, the dignity and the worth of human personality. The provisions of the constitution bear more than abundant testimony to its highly democratic character. Parliamentary institutions, ministerial responsibility to Parliament, elections conducted on the widest extension of franchise, the independence of the judiciary, the enumeration of the fundamental rights of man assuring equality of status and of opportunity, the generous treatment of the minorities with constitutional safeguards—all these bear witness to the fact that our constitution is both in letter and spirit truly democratic.

The word "Republic" implies that there is to be no monarchical system of government in the country and that India will be a republic with an elected President as the Head of the State instead of the British sovereign. The British sovereign is no longer the monarch of India. The head of the State is the President who is elected indirectly by the people for a term of five years but who can be removed from office earlier by the process of impeachment. India has now become a unique republic continuing its membership of the

Commonwealth of Nations. At one time, it was thought to be impossible to fit in a republican state into the framework of the British Commonwealth of Nations. However the legal difficulties, real and imaginary, were overcome at the Commonwealth Prime Ministers' conference held in London in April 1949 and a communique was issued at the end of the conference as a result of which India's membership of the Commonwealth was continued. The concluding portions of the communique are as follows :—

"The governments of the other countries of the Commonwealth, the basis of whose membership of the Commonwealth is not hereby changed, accept and recognize India's continuing membership in accordance with the terms of this declaration.

"Accordingly, the United Kingdom, Canada, Australia, New-Zealand, South Africa, India, Pakistan and Ceylon hereby declare that they remain united as free and equal members of the Commonwealth of Nations, freely co-operating in the pursuit of peace, liberty and progress.

"These constitutional questions have been the sole subject of discussion at the full meetings of Prime Ministers."

Our free association with the Commonwealth of Nations will not only secure to us certain economic advantages but has enabled us to continue our association with the politically most advanced and civilised part of the world. This is a tribute to the practical political genius of the English race and of the wisdom and shrewd statesmanship of Prime Minister Nehru.

Value of the Preamble. In Powell vs. Kempton Park Race Course Co. Lord Halsbury, referring to the place of the Preamble in the construction and interpretation of an enactment, observed :— "Two propositions are quite clear : (1) that the Preamble may afford useful light as to what a statute intends to reach, and (2) if an enactment is itself clear and unambiguous, no Preamble can qualify or cut down the enactment." In other words, the Preamble may be said to be the key to the understanding of the enactment and, as it usually states or professes to state the general object and intention of the enactment, it may legitimately be consulted to solve any ambiguity in the text of the enactment. But the Preamble cannot be made use of to control the enactment if it is expressed in clear and unambiguous terms. Therefore, the Preamble, like the Directives of State Policy, will be helpful to the judiciary in interpreting the spirit of the constitution on the basis of the doctrine of "Implied Powers".

6. Though the Indian Constitution has borrowed some of the features from the constitutions of the U S.A., Ireland, and the German (Weimar) Republic etc., it is essentially in the British tradition in both form and substance and its debt is greatest to the constitutions of England and the Commonwealth countries. The form of government adopted both in the federation and in the states is the parliamentary democracy of the British model with an elected President. The

executives in the Union and the States are made unquestionably subordinate to their respective legislatures and dependent on the vote of the majority for their very existence. This parliamentary democracy of the British type was deliberately adopted by the framers of the constitution in preference to the presidential democracy of the U.S.A. The chief reason for such a preference was that the framers thought that parliamentary responsible government of the British type was best suited to Indian conditions. Further, they wanted to give the people a system of government with which they were familiar since 1937, and under which the people can exercise effective and constant control over the action of the executive. By deliberately adopting parliamentary democracy of the British type, India of her own accord came into line not only with the United Kingdom but also with the other independent Commonwealth countries in respect of the fundamental principles of government. The Indian Constitution, though a federation, is not based on the doctrine of the separation of powers. In this respect, the Indian constitution differs remarkably from the constitution of the U.S.A., which is based on the doctrine of separation of powers and functions. Like the British Constitution, the Indian Constitution follows the principle of the concentration of powers and functions. The executive which is an authoritative committee of the legislature, enjoys virtual leadership not only in execution but also in legislation. The President at the Centre and the Governors and Rajpramukhs in the States are made constitutional or nominal heads exercising powers and performing functions on the advice of ministers responsible to the legislature. The fathers of the Constitution were anxious to be benefited by the experiences of other major democracies in the working of their constitutions in such a manner as to include in the Indian Constitution all the best elements in other systems and avoid their glaring defects. Thus they improved upon the British Constitution by adopting an elected President as the head of the State instead of a hereditary monarch ; similarly they improved upon the American Constitution by making the executive in the Union as well as in the States responsible to the legislature. They also improved on all other democratic constitutions by devising a system of government with an exceptionally strong centre in order to overcome disintegrating forces and tendencies. Therefore, though it is generally said that the Indian Constitution is based on the Canadian federal model and reads like that of a unitary state, it must not be forgotten that our constitution is of a type itself and that it is in fact its own type, the Indian brand of federalism.

7. The Indian constitution establishes a federal state with an exceptionally strong centre (particularly in times of emergencies and crises). It may correctly be described as a quasi-federation with many elements of unitariness. According to Prof. Banerjee, "India's constitution is federal in form with a pronounced unitary bias." Prof. K. C. Wheare describes the nature of the Indian constitution as follows : "It establishes, indeed, a system of government which is

utmost quasi-federal, almost devolutionary in character ; a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features." The federal government has been made deliberately so overwhelmingly strong that the constitution reads like that of a unitary government. Even the architects of the constitution deliberately used the term "Union" in preference to the term "federation" which does not occur anywhere in this constitution. In this respect, the Canadian constitution profoundly influenced the framers of the Indian constitution. In both countries, historical circumstances determined the nature of the federation. The Canadians felt the need for a very strong federal government, because the lesson of the American Civil War was fresh in their minds and they wanted to avert the weakness of the American federal structure by providing for a very strong federal government. In India, also, it was felt that the government at the centre should be stong in order to mobilise our resources to meet any possible aggression. Further, the lesson of Indian history pointed to the need for a strong central government.

With a view to strengthen the federal government the following provisions were made : (1) The federal government has not only exclusive and concurrent powers but also residuary powers. The Union list and the concurrent list are very exhaustive and consist of most of the important items. (2) The President of Indian Union is empowered to take over all or any of the functions of the government of a State by issuing a proclamation in the event of the failure of the constitutional machinery in the State. Article 249 empowers the Union Parliament to legislate on matters enumerated in the State List, if the Rajya Sabha declares by a two-thirds majority that it is necessary or expedient in the national interest. Article 250 empowers the Parliament to make laws for the whole or any part of India even on subjects contained in the State list when a Presidential proclamation of emergency is in operation. Article 253 empowers the Parliament to make laws for the whole or any part of India for implementing any treaty or agreement or convention with any other country or any decision made at any international conference. According to Article 256, the executive power of the Union shall extend to the giving of such directions to a State as may be necessary to ensure compliance of the executive of the State with the Union laws. According to Article 257, the executive power of every State shall be so exercised as not to impede or prejudice exercise of the executive power of the Union and the Union is empowered to give such directions to the State as may be deemed necessary for the purpose. It will be abundantly clear from the array of powers vested in the Union government that every effort has been made to make that government deliberately strong, particularly so during times of emergency. But it must not be forgotten that the overriding powers of direction, supervision, and control vested in the Union Government will not be exercised during normal times when India would be allowed to function as a federal state, possessing as it does some of the essential features of federation.

8. Another characteristic of the Constitution is its reasonable flexibility. Generally, written constitutions are rigid; but the rigidity of the federal constitution is its inherent feature. The importance of a written constitution is much greater in the federal state than in the unitary state. Since the federal constitution defines the division of powers as well as the terms and conditions between the contracting states on the one hand and the national government on the other the provisions of a federal constitution must be held to be sacred and ought not to be allowed to be interfered with frequently. Since in a federal state, the federal constitution must be paramount to the constitutions of the component units, the constitution should not only be a written document marked by utmost precision and clarity, but it should also possess a certain degree of rigidity; *i.e.*, it should be incapable of amendment or alteration either by the federal government alone or by the State government alone. But at the same time, there ought to be provisions for some change which may be needed in the light of future experience. Hence, a provision for amendment of the constitution is generally provided for; but the power to amend the constitution must and cannot be vested in a body in which each unit by itself and all the units taken together have not an effective voice. Therefore, in a federation, the power to amend the constitution should not be vested either in the federal government or the governments of the units. Hence, in a federation, an independent third agency, which is representative of both the states and the federation, must be entrusted with the power to bring about amendments to the constitution.

Our constitution provides for an easy and simple method of amendment. The need for making the constitution flexible was realised by the framers of the constitution. Mr. Jawaharlal Nehru himself made it clear by observing, "When the world is in turmoil and we are passing through a very swift period of transition, what we may do today may not be wholly applicable tomorrow." To quote Dr. Ambedkar, the Constitution has not been set in "a tight mould of federalism". It is so designed as to work as a federal polity during normal times, but at the same time capable of being transformed into a unitary system during emergencies and crises. So, the makers of the constitution deliberately took special effort to avoid the inherent rigidity and legalism of a federal constitution. The constitution can be amended in three ways (Art. 368). The provisions of the constitution have been classified into three groups in an ascending order of importance and three different methods of amendment have been prescribed for each group. The provision in the first group can be amended by an act of the Union Parliament passed by a simple majority like any ordinary law; for example, (*i*) the creation or admission of new states, (*ii*) the reconstitution of existing states, (*iii*) changes in their boundaries, names etc., (*iv*) the creation or abolition of second chambers in the states, (*v*) the official languages of the Union and the states.

The provisions in the second group which form the major

portion of the constitution can be amended by a special majority in each House of Parliament *i.e.*, by a majority of the total membership in each house, and by a majority of not less than two-thirds of the members present and voting in each house ; for example, provisions relating to Fundamental Rights. The third group, which consists of the more important provisions, require for their amendment not only an act of the Union Parliament by a majority of the total membership in each House and at least two-thirds majority of the members present and voting but also ratification by the legislatures of not less than one-half of the states specified in Parts A and B of the First Schedule ; for example (*i*) provisions or articles dealing with the mode of election of President, (*ii*) the extent of the executive power of the Union, (*iii*) the extent of the executive power of Part A States in the First Schedule, (*iv*) the Union Judiciary, (*v*) the High Courts in Part A States, (*vi*) the Legislative Lists (division of legislative powers between the centre and the units, (*vii*) representation of States in Parliament and Art. 368 itself which prescribes the method of amendment.

Thus, the constitution is reasonably flexible and elastic enough for adaptation to India's changing and ever-growing needs. Among the federal constitutions, the Indian Constitution must be said to be the least rigid ; it strikes a balance between extreme rigidity on the one hand and extreme flexibility on the other.

9. Another striking feature of the Indian constitution is that it is neither federal nor unitary but quasi-federal. It exhibits the features of both federal and unitary governments. The federal features in the constitution are : (1) a written constitution and its supremacy : (2) the co-existence of two sets of government, Union and State governments, with a clear-cut distribution of power between the two; (3) the existence of a Supreme Court to act as the interpreter and guardian of the constitution. But, there are some peculiar features of the Indian federation resulting from the special political conditions and the circumstances under which it was brought into existence. (1) In all federations the status and character of the component units are usually similar, but it is not so in Indian federalism. For instance, the federation consists of different kinds of States necessitating a slight difference in the range of the powers of the federal government in Part A States and Part B States. Part C States are only administrative units. (2) The division of the powers between the Union and the States is such that the Indian federation is of a peculiar type ; it is unitary as well as federal according to the requirements of time and circumstance. It is intended to work as a federal government in normal times but as a unitary government during times of emergency. (3) In the U. S. A., the federation exists by virtue of its own constitution and all State authorities are the creatures of the State constitutions and are subordinates to them. But, like the Canadian constitution, the constitution of the Indian Union and of the States is of "a single structure from which neither can get out and within which they must work". (4) In other

federations, the federal Upper House secures the equality of status of the federating units by according equal representation in it of all the units, irrespective of their size, population and resources. The federal Lower House is constituted on a population basis. Thus, the upper chamber secures the equality and autonomy of the federating units, while the lower house secures national unity. But, the Union upper house is not constituted on the principles of equality or representation of the federating States. On the other hand, representation in that house is based on the population of each States. (5) The executive head of U.S.A., is elected by the people, that of Canada and Australia, appointed by the Crown on the advice of the Dominion cabinet, whereas the executive of the Indian federation is elected by the Union Parliament and the State Legislatures.

10. Generally, in a federal system of government there is a double citizenship—(1) a citizenship of the federation as a whole and (2) a citizenship of each component State. In the U.S A., the dual polity is followed by a dual citizenship *viz.*, citizenship of the U.S.A., and citizenship of the State. The American States can discriminate in favour of their own citizens in certain political matters. For instance, the right to vote and the right to hold appointments in public service. Such a thing has been made impossible in India, for the Indian Federation has no dual citizenship. In other words, there is only one citizenship for the whole of the Indian Union, and that is the Union of Indian citizenship.[1] There is no such thing as a State citizenship. Every Indian has the same rights of citizenship, no matter in which particular State he lives. It is worth while remembering in this connection that, before 1937 when provincial autonomy was inaugurated, the Indian provinces were not sovereign States ; and therefore there was no question of a separate provincial citizenship. That position was continued by the Government of India Act of 1935 and the same position is adopted in the present constitution. This feature of the Indian constitution clearly differentiates it from that of the U.S.A.

11. A dual polity is generally bound to create diversity in laws, administration, and judicial protection. But the framers of the Indian constitution have taken special care to provide certain means for securing uniformity in all matters which are essential to the preservation of the unity of the country. They have provided for (1) a single integrated judiciary for the whole Union, (2) a single citizenship, (3) uniformity in fundamental civil and criminal laws, (4) a common All India Service for the Union and the States for important key posts.

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[1] A bill has been introduced in 1955 to provide for the acquisition and termination of citizenship. Arts 5—9 of the Constitution has defined who should be considered citizens at the time of the inauguration of the constitution, but left it to Parliament to decide about future acquisition of citizenship. The bill of 1955 provides for citizenship by birth, descent, registration and naturalisation and also termination of citizenship under certain circumstances.

In India there is no separate and independent judiciary for the States. The Supreme Court in Delhi and the High Courts in the States form one single integrated judiciary for the whole Union competent to deal with all cases arising under the constitutional law, the civil law and the criminal law. This is not so in the U.S.A., where there is a dual system of courts, one to administer Union laws and the other to administer State laws.

12. An outstanding feature of the constitution is the incorporation of a chapter on Fundamental Rights, on the model of many of the written constitutions of the major powers of the world with the exception of Britain and the Commonwealth countries. There is no doubt that this chapter is probably the most important in the whole constitution and the object of its inclusion was to give effect to the solemn declaration contained in the Preamble. To Indian leaders who had very bitter experience of the denial of civil liberties during the days of the historic and heroic struggle for freedom, a charter of rights and liberties was deemed an absolute necessity. Further, a declaration of fundamental rights was regarded as an effective assurance to the minorities in India that their rights were fully protected and safeguarded in the new constitution which provided for government by the majority party. The fundamental rights enumerated in the constitution are fairly large and seek to protect the individual citizen against arbitrary, high-handed or irresponsible action on the part of the government and against discriminatory treatment. The fundamental rights are enumerated under the following heads : (1) right to equality, (2) right to freedom, (3) right against exploitation, (4) right to freedom of religion, (5) cultural and educational right, (6) right to property, and (7) right to constitutional remedies. According to the constitution the fundamental rights are justiciable and constitutional remedies are provided for their enforcement. A strong and independent judiciary is provided for, to be their guardian, custodian and protector.

A declaration of fundamental rights has become a common feature of all modern constitutions. The Preamble of the constitution of the Fourth French Republic contains such a declaration. But the constitution does not provide for constitutional remedies for the enforcement of those rights. Part I of the constitution of the Italian Republic contains a declaration of the rights and duties of citizens classified under (1) civil relations, (2) ethical and social relations, (3) economic relations, (4) political relations. The constitution of the Federal Republic of Germany of 1949 also contain an enumeration of fundamental rights under the heading basic rights which contains 19 articles.

But it should be noted that the fundamental rights enumerated in the Indian constitution are not absolute. They have been limited in many respects. The right to move the Supreme Court may be suspended if the President issues a proclamation of emergency ; and the emergency provisions included in Part II of the constitution remind us of the famous section 48 of the German (Weimar) Constitution

of 1919 by virtue of which all rights of citizens including the constitution could be suspended. Further the list of fundamental rights is not exhaustive or comprehensive. There are some rights which do not find a place in the constitution but which are upheld by the laws and regulations prevailing in the country. For example, the non-inclusion of the right not to be condemned without being heard, is a serious omission in the constitution. It would have been better if the framers of the constitution had copied the American model of providing against the violation of fundamental rights enumerated and then providing further, as the Americans have done (in Art. 9—1791) that "The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people."

13. Following the model of the Spanish and Irish constitutions, the Indian constitution contains a chapter on what is known as the Directive Principles of State Policy, in Part IV (Arts. 36-51). This part lays down certain principles of social, economic and administrative policy suitable to the peculiar conditions prevailing in India and designed to bring about an ideal welfare state. The declaration states the ideal of the welfare state and outlines a programme for its achievement. It enumerates certain new rights described as social and economic rights which impose positive obligations on the state. The Directives, unlike the fundamental rights, are not justiciable *i.e.*, they are not enforceable by process of law. The Directive Principles include the right to work, education and public assistance in cases of unemployment, old age, sickness etc., just and humane conditions of work, maternity relief as well as a living wage, leisure and social and cultural opportunities for all workers; the enforcement of a uniform civil code throughout the country; a provision of free and compulsory education for all children below fourteen years of age; the organisation of agriculture and animal husbandry on modern lines; the improvement of public health; prohibition of intoxicating drinks and drugs and of the slaughter of cows; the preservation of ancient monuments of artistic or historic interest; the organisation and improvement of village panchayats; the separation of the judiciary from the executive and the promotion of international peace and security. Though these directives cannot be enforced in the courts and generally characterised as political philosophy rather than practical politics, yet, they have a limited value, as will be explained in a subsequent chapter.

It is sufficient here to point out that, like the Preamble, the Directive Principles also provide the key to the understanding of the constitution whenever the clauses of the constitution are either silent or ambiguous. Thus, they will be very helpful to the judiciary in interpreting the spirit of the constitution.

14. Another distinctive feature of the new constitution is its secular character. This is a remarkable departure from the ancient Indian polity, the theocratic polity of the period of the Muslim domination and the communal polity sedulously fostered by British

imperialism particularly in the recent past on the eve of their withdrawal from India. According to Venkataraman, secular State is "neither religious nor irreligious nor anti-religious, but is wholly detached from religious dogmas and activities and thus neutral in religious matters." A secular State is one which is completely free from the obsessions of religion or theocracy, which maintains religious neutrality in a multi-religious state, which refuses to recognise man-made barriers such of those of race, colour, creed etc., which believe in freedom, toleration, equality and the oneness of all individuals. It deals with the relation between man and man, and not those between man and his Creator. The establishment of the secular state in India is regarded by Prof. Venkatarangaiah as a triumph of the humanistic over the communalistic conception of the State. In the communalistic state, the state is regarded as an association not of individuals proper but of communities. The individual is taught to seek the satisfaction of his cultural, social, economic, religious and political needs in a communal grouping. This breeds a communalistic regimentation of the individual, generates intolerance and leads to totalitarianism. But, the humanistic conception, on the other hand, recognises the individual as the foundation and unit of social organization. In other words, in a secular state, there is no state relgion ; nor is there any discrimination against any religion ; secularism does not mean a negation of all religions ; it does not aim at the abolition of all religious beliefs and practices. On the other hand, it is the duty of the secular state to guarantee to its citizens freedom of belief, worship, and conscience, consistent with the security of the state and ethical standards of a dynamic society. Subject to these limitations, every citizen is guaranteed freedom of religion and no religion is permitted to become an obstacle in the way of social and national progress.

The incorporation in our constitution of Fundamental Rights and the declaration of Directive Principles of State Policy give us convincing proof that the constitution seeks to make India a really secular state. According to Article 15 (*a*), there is to be no discrimination on grounds of religion, race, caste, sex or place of birth, (*b*) access to shops, public restaurants, hotels and places of public entertainment as well as the use of wells, tanks, bathing ghats, roads, places of public resort maintained out of state funds, are all guaranteed. Article 16 guarantees equality of opportunity in matters of appointments under the state. By Article 17, Untouchability is abolished and its practice in any form is forbidden.[1] Arts. 25 and 26 assure freedom of religion including the right to establish and maintain institutions for religious and charitable purposes. Article 29 guarantees the right of admission into any educational institutions maintained by the state or receiving aid out of state funds.

15. Another noteworthy feature of the constitution is the integration of the Indian States with the rest of India. We saw that.

[1] A recent law (1955) provides penalties for offences against this provision.

during the Britssh regime, India consisted of (1) British Indian provinces wherein democratic form of government was prevalent; and (2) the Indian States, varying in size, population, resources and in different stages of industrial and educational advancement under the rule of Indian princes wherein autocracy was the prevalent form of government. On the withdrawal of the British power from India, their paramountcy over Indian States lapsed and for all technical purposes, the States, big and small, became completely free and independent. The existence of hundreds of sovereign states in Indian territory meant a threat to the unifying forces in favour of the ideal of the united India. Fortunately for India and quite happily, largely on account of the great prestige, tenacity, determination and shrewd statesmanship of the late lamented Sardar Vallabhbhai Patel and also thanks to the good sense, understanding and patriotism of most of the princes, the much-desired political unity of India was achieved by a policy of merger and integration within the remarkably short period of two years. This is regarded as an achievement that has no parallel in the history of the whole world. Our new constitution should not be regarded as an "alliance between democracies and dynasties;" but on the other hand it is a "real union of the Indian people built on the basic concept of the sovereignty of the people."

16. The constitution has also provided for certain safeguards for minorities. Though the constitution has done away with the system of communal electorates, it contains some special provisions relating to certain classes of people who deserve special consideration and treatment by reason of their backwardness. These special provisions have been made mainly for the educationally backward classes and that too for the limited period of ten years *i.e.*, till 1960. Some special favour is also shown to the Anglo-Indian community; but, in their case also, the special concessions would come to an end at the end of 10 years from the inauguration of the constitution. Apart from guaranteeing equality of rights and the cultural and educational rights, the minorities have been given some special privileges by the constitution. Seats for certain minority communities like the Scheduled castes and Scheduled tribes are reserved in the House of the People (Lok Sabha) at the centre and in the Legislative Assembly of every State on the basis of their population. Such reservation will cease to have effect after 1960.

17. A peculiar feature of the Indian constitution is that certain well-recognised conventions of the British constitution are presumed to be incorporated in our constitution by implication. When we have adopted a written constitution running into 250 pages and odd, there is no justification why some of the conventions of the British constitution should be presumed to be implied instead of being specifically incorporated in the constitution. For instance, Article 74 provides for a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. But, surprisingly enough, it is nowhere stated in this long constitution whether the President is bound to act in

accordance with the advice tendered to him by the ministers. Under these circumstances, if the President is so determined, he can assume the role of a dictator at least for a short period and no one can accuse the President of having acted unconstitutionally. When it is definitely laid down in the constitution of the Third and the Fourth French Republics, that "every act of the President of the Republic must be countersigned by the President of the Council of Ministers and by a Minister" (Article 38, Constitution of the Fourth French Republic 1946), it is difficult to understand why exactly the framers of the Indian constitution deliberately closed their eyes to such vitally important provisions. If their intention was really that the President should be a nominal executive like the British hereditary monarch and the Indian cabinet should be the real executive like the British cabinet, they could have added at least one short provision that "the relations between the Indian President and the Prime Minister and the other ministers are practically the same as those between the monarch and the cabinet in Britain. But they did not do any such thing. On the other hand, they have taken great care to include in the constitution some of the conventions of British constitution like (1) the collective responsibility of the ministers to the House of the People (Article 75), and (2) the provision that every minister shall be a member of Parliament (Article 75). Again, Article 105 (3) states that the powers, privileges and immunities of each House of Parliament and of the members and committees of each House shall be...those of the House of Commons of the Parliament of the United Kingdom and of its members and committees.

18. Another peculiarly novel feature of the constitution is that the President is empowered by Article 123 to promulgate ordinance during recess of Parliament, if he is satisfied that circumstances exist which render it necessary for him to take immediate action. An ordinance so promulgated has the same force and effect as an Act of Parliament. Likewise, Article 213 confers similar powers on the Governor of a State. The conduct of a a government by such a procedure *viz.*, by issuing ordinance by the executive is unknown to the constitutions of Great Britain, U.S.A., and Australia. The provision for legislation by ordinance both by the Union government and by the State government is an irresistible temptation particularly when the ministry is not popular. Further, legislation by ordinance cuts against the very fundamental and basic principle of democracy. The collection of terminal taxes from the Kumbha Mela pilgrims by means of a Presidential ordinance in 1954 without the sanction of the Parliament was regrettable.

19. Further, the constitution is a curious mixture of 16th century absolutism, 19th century liberalism, and a half-hearted policy of socialism. Preventive detention, the power of the President to suspend even the fundamental rights to move the Supreme Court at least for a short period without the consent of Parliament and legislation and imposition of taxes by ordinance are nothing but

relics of the 16th century absolutism. The provisions guaranteeing equality before law, equal protection of the law, and the emphasis laid on individual rights and liberties are evidence of 19th century liberalism as expounded by Dicey. The efforts, side by side, to arm the government with powers to restrict the fundamental rights in the interest of public or general welfare and to regulate economic life as well as the Directive Principle of State Policy and the Constitution (Fourth) Amendment Act of 1955 providing for acquisition by the State of agricultural and industrial property and means of production at nominal market price are instances that go to prove the adoption of the socialistic pattern of society.

20. Perhaps the most strikingly novel aspect of the Indian Constitution is the abandonment of the idea of absolute, unlimited national sovereignty as a central principle governing her conduct in international relations. In conformity with the post-war constitutions of France, Italy and Western Germany and in accordance with the principles of the Charter of the United Nations, the Indian constitution has incorporated a few constitutional provisions on the conduct of the foreign policy of the country. They are proof positive of the fact that the framers of the Indian constitution were aware, however imperfectly it might be, of the extreme importance and urgency of the problem of international peace and security and that they realised the national responsibility for building up an enduring and effective international organization. Article 51 of the Directive Principles of State Policy gives us the clue regarding India's attitude and policy in the international affairs. The Article runs thus : The State shall endeavour to—(*a*) promote international peace and security ; (*b*) maintain just and honourable relations between nations ; (*c*) foster respect for international law and treaty obligations in the dealings of organized peoples with one another ; and (*d*) encourage settlement of international disputes by arbitration.

Similar provisions have been incorporated in the constitutions of the Fourth French Republic which states in its Preamble : (1) "The French Republic, faithful to its traditions shall abide by the rules of international public law, it shall not undertake wars of conquest and shall never use force against the freedom of any people. (2) On condition of reciprocal terms, France shall accept the limitations of sovereignty necessary to the organization and defence of peace." Similarly the new constitution of the Italian Republic of 1947 provides in Article 11 that Italy consents, on conditions of parity with other states, to limitations of sovereignty necessary to an order for ensuring peace and justice among the nations ; it promotes and favours international organizations directed towards that end. Likewise, the constitution of the Federal Republic of Germany of 1949 states (1) the federation may, by legislation, transfer sovereign powers to international institutions. (2) For the maintenance of peace, the federation may join a system of mutual collective security ; in doing so it will consent to those limitations of its sovereign powers which will bring about and secure a peaceful and lasting order in

Europe and among the nations of the world. (3) For the settlements of disputes between nations, the federation will accede to conventions concerning general, comprehensive, obligatory system of international arbitration.

Part III of the Indian Constitution deals with Fundamental Rights. Article 13 states that all laws in force before the commencement of the Constitution, to the extent of their inconsistency with fundamental rights guaranteed in this part are null and void and all laws abridging these rights which may be passed in the future also are null and void.

Fundamental Rights have been classified under seven heads : (1) Right to Equality. Arts. 14-18 deal with this right under which provision has been made for (*a*) equality before the law or equal protection of the laws (Art. 14) ; (*b*) prohibition of discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (Art. 15, Cl. 1) ; (*c*) removal of any disability, liability, restriction or condition regarding access to shops, public restaurants, hotels, and places of public entertainment or the use of wells, tanks, bathing ghats and places of public resort, maintained either wholly or partly out of public funds or dedicated to the use of the general public ; (*d*) equality of opportunity regarding appointments in the service of the state ; (*e*) abolition of Untouchability ; the enforcement of any disability arising out of it shall be an offence punishable by law ; (*f*) abolition of titles except those given for military or academic distinction.

(2) Right to Freedom (Arts. 19-23). (*a*) Freedom of speech and expression ; (*b*) right to hold meetings and processions peacefully and without arms ; (*c*) right to form associations or unions ; (*d*) the right to move freely throughout India ; (*e*) the right to reside and settle in any part of the territory in India ; (*f*) the right to acquire, hold and dispose of property ; (*g*) the right to practise any profession or occupation, trade or business ; (*h*) the right to protection against conviction except for breach of the law : (*i*) protection of life and personal liberty ; (*j*) protection against detention except as provided for by Parliament.

(3) Right against Exploitation (Arts. 23-24). (*a*) Prohibition of traffic in human beings ; (*b*) abolition of forced labour ; (*c*) prohibition of employment of children in factories, mines, or in any other dangerous employment.

(4) Right to freedom of religion (Arts. 25-28). Freedom of conscience is guaranteed subject to public order, morality and health. Subject to the above, all have the right to propagate their religion and manage their religious affairs. Taxes should not be diverted to promote any particular religion. No religious instruction in educational institutions maintained wholly out of public funds is permissible.

(5) Cultural and educational rights (Arts. 29-30). (*a*) Minorities have the right to conserve their language, script or culture ; (*b*) no discrimination should be made regarding admission to educational institutions maintained by the state, or receiving state help, on grounds of religion, race, caste, or language, (*c*) rights of minorities, religious or linguistic, to have their own educational institutions is guaranteed.

(6) Right to property (Art. 31). No person should be deprived of property except by authority of law, or according to procedure laid down for compulsory acquisition of property.

(7) Right to constitutional remedies (Art. 32). All have the right to move the Supreme Court for the enforcement of fundamental rights. In such cases, the court will have the power to issue directions, orders, or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, for the enforcement of these rights. The power to issue such writs has been extended to High Courts also.

It is noteworthy that the Fundamental Rights listed in the constitution are limited by conditions. While rights like freedom of expression and association and personal liberty are guaranteed to all, some rights like freedom of movement are guaranteed only to citizens. Further, Article 33 empowers Parliament to modify or restrict the application of these rights to the armed forces. Article 34 empowers Parliament to indemnify persons charged with restoration of order in an area under martial law. Article 358 empowers the President to suspend these rights, while a proclamation of emergency is in force, and Article 359 authorises him to suspend the right to get constitutional remedies from the courts during periods of emergency. In the American Constitution, no fundamental right can be suspended except the right of habeas corpus. Even this right can be suspended only by the courts and that too, only in the event of rebellion or external invasion Our constitution has evidently based these provisions on part II of the constitution of the German (Weimar) republic, which empowered its President to suspend or abrogate, wholly or in part, some of the most important fundamental rights in the interest of public security and order.

Since the enactment of the constitution, certain important changes have been made by constitutional amendments in these fundamental rights. In 1951 amendments were introduced mainly with reference to four matters. Amendment to Article 19 guaranteeing freedom of speech empowered the state to impose reasonable restrictions in the interest of public order and friendly relations with foreign powers. The same Article was amended to safeguard nationalization schemes undertaken by the government. Article 15 relating to prohibition of discrimination was amended to validate provisions for advancement of any socially and educationally backward classes of citizens. Two new Articles, 31 (*a*) and 31 (*b*), were added to Article 31 which deals with the right to property so as to permit the state to

abolish intermediaries in agricultural holdings like zamindars. The ninth schedule listed certain land reform acts enacted by various state governments and said none of these should be considered invalid.

Another amendment of 1955 has modified Arts, 31, 31 (*a*) and item 305 of the Ninth Schedule. These amendments gave the state discretionary power to take over or requisition property, or take over management of property for a temporary period or transfer any undertaking, wholly or in part, from one company to another. It made it clear that compensation to be paid by the state would be fixed by the legislature and no court can interfere. This amendment affects both industrial and agricultural property. The immediate reason for the amendment was the case of the Sholapur Mills where, when an inefficient concern was taken over by the state, the court declared the action of the state unlawful. There were also disputes about the amount of compensation paid by the state. There was keen opposition to these amendments ; but the government defended them on the ground that the constitution was not meant to be static but must be adjusted to suit new circumstances.

We turn now to a *brief summary of the Directive Principles of State Policy.*

Aritcle 36 deals with the definition of the term "*The State*" which has the same meaning as in Part III of the Constitution.

Article 37 explains the extent of the legal effect and binding nature of these Directives of State Policy. It states clearly that the provisions contained in this part are not enforceable by any court ; but yet it states distinctly that the principles therein laid down are nevertheless fundamental in the governance of the country ; and it shall be the duty of the state to apply these principles in making laws.

Article 38 defines what ought to be the general duty of a modern progressive democratic state. It declares that the state "shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice —social, economic and political—shall inform all the institutions of the national life."

Article 39 lays down that the state shall direct its policy in such a manner as (*a*) to secure the right to an adequate means of livelihood to all its citizens, men and women equally ; (*b*) to so distribute the ownership and control of the material resources of the country as best to subserve the common good ; (*c*) to operate the economic system in such a manner as to prevent the concentration of wealth and means of production to the common detriment ; (*d*) to secure equal pay for equal work for both men and women ; (*e*) to secure that the health and strength of the workers, men and women, and the tender age of children are not abused and that citizens are not compelled by economic necessity to enter avocations unsuited to

their age or strength ; and (*f*) to protect childhood and youth against exploitation as well as moral and material abandonment.

According to Article 41, the state shall, within the limits of its economic capacity and development, make effective provision for securing the right to (1) work, (2) education, and (3) public assistance in cases of (*a*) unemployment, (*b*) old age, (*c*) sickness and disablement, and in any other cases of undeserved want.

Article 42 lays down that the state shall make provision for (1) just and humane conditions of work, and (2) maternity relief.

Article 43 provides that the state shall endeavour (1) to secure, (by suitable legislation or economic organization, or in any other way) to all workers, agricultural, industrial and others, (*a*) work, (*b*) a living wage, (*c*) conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities ; (2) to promote particularly cottage industries on an industrial or co-operative basis in rural areas.

The state shall endeavour (1) to secure for all its citizens a uniform Civil Code throughout the country (Article 44) ; (2) to provide within ten years from the commencement of this constitution (*i.e.*, by 1960) for free and compulsory education for all children until they complete the age of fourteen years (Article 45) ; (3) to promote with special care the educational and economic interests of scheduled castes and scheduled tribes, so as to protect them from social injustice and all forms of exploitation (Article 46) ; (4) to raise the level of nutrition and the standard of living of its people, including public health, and in particular to bring about prohibition of intoxicating drinks and drugs, except for medicinal purposes (Article 47) ; (5) to organise agriculture and animal husbandry on modern and scientific lines, and particularly take steps for (*a*) preserving and improving the breeds, (*b*) preventing the slaughter of cows and calves and other milch and draught cattle (Article 48).

As many of our ancient historical monuments are in ruins, as they constitute a rich heritage of India, and as they are the standing proof and crowning illustration of the departed glory and greatness of our civilisation and culture.

Article 49 imposes an obligation on the state to preserve and protect from spoliation, disfigurement, destruction, removal, disposal or export, every monument, or place or object of artistic or historical interest, declared by Parliament to be of national importance.

Article 50 provides that the state shall take steps for the separation of the judiciary from the executive.

In view of the great importance attached to the village panchayats in our ancient Indian polity, Article 40 provides for the organization of village panchayats with the necessary powers and authority to enable them to function as units of self-government.

Article 51 declares definitely that the state shall endeavour to (1) promote international peace and security ; (2) maintain just and honourable relations between nations ; (3) foster respect for international law and treaty obligations in the dealings of organized peoples with one another ; and (4) encourage settlement of international disputes by arbitration. It must be noted that these are the chief aims of the U.N.O. of which India is an original member.

These principles are intended to be kept in mind by the legislature and executive authorities in enacting and executing laws. The declaration of such directive principles based on political, economic and social justice is not an entirely novel feature of our Constitution, for as early as 1919 the German (Weimar) Constitution set up the precedent for incorporating such principles ; and that precedent has been followed by a number of other countries both before and after World War II, as evidenced by the constitutions of Austria 1929, Republican Spain 1931, Eire 1937, France 1946, Italy 1947 and Western Germany 1949. It must, however, be borne in mind that while most of the constitutions cited above do not make any distinction between justiciable and other rights of the individual citizen, the constitution of Eire made a clear distinction between the two categories of rights, and that model has been followed in India.

It is clear that these directives are merely in the nature of moral precepts and economic ideals. They have only moral an l political sanction and lack the most vital factor, namely, legal force. They confer no legal rights, create no legal obligations and provide no legal remedies. They are in the nature of general instructions or directions, or recommendations to all Governments and authorities within the territory of India.

Sir Ivor Jennings criticises these Directives on the ground that (*a*) "the ghosts of Sidney and Beatrice Webb stalk through the pages of the text. Part IV of the constitution expresses Fabian Socialism without Socialism, for only the nationalisation of the means of production, distribution and exchange is missing ; but nationalization for the Fabians was a means to an end and not the end itself ; the end is quite adequately expressed in the Constitution". (*b*) It is not worthwhile to insert in a constitution a collection of political prinicíples obviously derived from English political experience in the nineteenth century and which are deemed to be suitable for India in the middle of the twentieth century. (*c*) Further the ideas or ideals embodied in these Directives may not only become antiquated or outmoded in the next century, but they may indeed become in the next generation a citadel of reactionary ideas acting as a brake on the wheels of national progress. (*d*) Some of them are obviously pious aspirations, for instance, the provision of free and compulsory education for all children until they complete the age of fourteen years. Dr. Jennings pertinently remarks, "Probably nobody in the Constituent Assembly wanted to provide free and compulsory education for infants in arms, though they appear to be "children" within the meaning of the constitution. Nor is there anything particularly

significant about the age of fourteen, save that most countries (following the example of Britain until 1945) have fixed that age."

Other points of criticism can be passed over briefly. They are that the declaration of Directives is hardly inspiring ; that it is very general, vague and full of repetitions ; that it lacks proper cohesion and logical arrangement ; that it combines comparatively unimportant issues with the most important and pressing social and economic problems ; that like the declaration of rights in the post-war European Constitutions, it does not state the goal clearly and is found to be evasive on the most decisive social problems of the day ; that it is something like an election manifesto ; that it can be exploited by the critics of the government for effective criticism.

In spite of such vehement criticism, it must be admitted that these principles are not as meaningless and useless a part of the constitution as they are made out to be. They give us at any rate an indication of the policy which the government of the Union and of the States ought to follow. The incorporation of these principles in the constitution itself gives them an added importance and status. As Prof. N. Srinivasan points out, "It is a constitutional recognition of the responsibility of the state to promote the social and economic welfare of its citizens and will serve as a constant reminder to legislatures and executives of their fundamental obligations."

Mr. Basu, the learned commentator of the Indian Constitution, suggests that the President of the Union or the Governor of a State may refuse to assent to a law passed by the legislature, on the ground that such a law is inconsistent with the Directive Principles enumerated in Part IV of the Constitution. Dr. Ambedka , the principal architect of the Constitution maintains that the Directive Principles cannot be pressed into service either by the President or by a State Governor for the purpose of vetoing a law passed by the legislature. It is no doubt true, that, under normal circumstances, the Directive Principles of State Policy cannot override the Fundamental Rights of individual citizens guaranteed in Part III of the constitution. But, if the President or the Governor of a State should choose to veto a law on the ground that it is repugnant to the Directive Principles of State Policy, none of them can be accused of having acted in an unconstitutional manner, though the power vested in the President or the Governor to veto a law passed by the legislature is not absolute, but only limited.

The object of incorporating the Directives was explained by Dr. Ambedkar, the Chairman of the Drafting Committee, in the Constituent Assembly. "It was not the intention of the framers to prescribe any rigid programme for the attainment of the ideal of economic democracy. Parties were to be completely free to advocate their own programmes and appeal to the electorate for a mandate for them. But the framers desired to prescribe that every government ..... shall try to bring about economic democracy."

The principles embodied in the Directives are mostly those which the fathers of the constitution conceived as the fundamental principles of a new social and economic order which they desired to be established in India. It is definitely stated in the constitution that the Directives are not enforceable by any court. But it is also distinctly stated that the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Now the question arises as to what exactly is the meaning or significance of the word "*fundamental*". If the principles are fundamental, they must serve some definite purpose, probably to overcome conflicts between a law enacted by a State regarding the fundamental rights of the citizens and another law enacted by the state giving effect to the Directives of State Policy. If a law regarding the fundamental rights of individual citizens should come into conflict with another law giving effect to the Directive Principles of State Policy which are meant to promote the larger general welfare of the state as a whole, the latter law shall prevail over the former. This principle is well known in judicial review. It may be that the result aimed at by these Directives is practically the same as that which is achieved in the U.S.A. by the courts in giving effect to the "police power of the State" and the doctrine of "due process of law." The use of the expression "fundamental" must be taken to imply that all the agencies of government responsible for the government of the country ought to be guided by these principles. It implies that even the judiciary has to keep these principles in view in the process of interpreting the laws. In short, the objectives mentioned in the Preamble with the addition of the expression "general welfare" cover all the principles enumerated in Part IV. Since the Judiciary has to interpret not only the letter but also the spirit of the constitution, the Directives of State Policy should not be regarded as meaningless platitudes possessing no value whatsoever. On the other hand, these Directives together with the Preamble, can go a long way in strengthening the hands of such of those progressive and forward looking judges in developing what is known as the doctrine of "implied powers" ; and the Directive Principles in the constitution should be deemed to embody this doctrine implicitly. If the Directive Principles are in the nature of obligations imposed on the state the state can only discharge them through proper legislation. Thus, these Directives of State Policy do possess some limited value.

The importance of the Directives is increasingly realised by the Planning Commission set up by the Government of India, who have realised the fact that the economic and social pattern to be attained through National Planning is indicated in the Directive Principles of State Policy. Therefore Planning in India will follow these Principles with the object of bringing about the ideal of Economic Democracy.

The importance of the Directives is also illustrated from the

decision of the Supreme Court in the case of the State of Bihar *vs.* Sir Kameshwar Singh[1], where the Supreme Court held that the Bihar Land Reforms Act of 1950 by which big blocks of landed estates were acquired by the state on payment of small compensation was constitutional. It is interesting to note that one of the main arguments advanced against the validity of the Act was that the said Act did not postulate a public purpose as required by Article 31 (2). In the course of the judgment, His Lordship Justice Mahajan made the following remarks : "Be that as it may, it seems to me that in spite of the criticism levelled against the act by the learned Counsel, it cannot be said that the Act would fall because it fails to postulate a public purpose. That act is entitled the Bihar Land Reforms Act, 1950. The Preamble of the Constitution says that India has been constituted into a Sovereign Democratic Republic to secure to all its citizens justice, social, economic and political.

"Article 39 of the Directive Principles of State Policy states as follows : 'The State shall in particular direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good ; and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.' Now it is obvious that concentration of big blocks of land in the hands of a few individuals is contrary to the principles on which the Constitution of India is based. The purpose of the acquisition contemplated by the impugned Act, therefore, is to do away with the concentration of big blocks of lands and means of production in the hands of a few individuals and to so distribute the ownership and control of the material resources which come into the hands of the state as to subserve the common good as best as possible. In other words, shortly put, the purpose behind the Act is to bring about a reform in the land distribution system of Bihar for the general benefit of the community as advised." These observations of the Supreme Court point out the implications and the utility of the Directive Principles.

Speaking broadly, as India has adopted a democratic form of government which has to be worked only with the help of the political party system, it is inevitable that one party will be in power for some time giving place to another when it loses the confidence of the people. Whether the party in power is progressive or reactionary, the Directive Principles of State Policy cannot be easily ignored. Therefore gradually those Principles may be given effect to in the years to come.

The Union Executive consists of a President, a Vice-President and a Council of Ministers.

The constitution lays down that there shall be a President of India. The Union Executive is parliamentary on the British model but with an elected president instead of a hereditary monarch. In

[1] All-India Law Reports (Supreme Court, 1952), p. 252.

the United Kingdom, the nominal executive head is a hereditary monarch, whereas the nominal executive of the Indian Republic is an elected president for a term of five years. In all other respects, the Indian President is expected to be just a mere replica of the constitutional head of the British democracy.

Parliamentary democracy in the United Kingdom works most successfully and smoothly largely on account of, among other things, the following essential factors : (1) The acceptance of the principle of majority rule ; (2) a substantial measure of agreement on some fundamentals between the party in power and the opposition ; (3) existence of an ever-alert, efficient and powerful opposition ; (4) faith in democracy and democratic methods ; (5) the willingness of the minorities for the time being to accept and act according to the decisions of the majority ; (6) the existence of great political parties divided by broad issues of policy rather than by sectional interests ; and finally, (7) "the existence of a critical, alert, and moving body of independent public opinion owing no permanent allegiance to any one particular political party, and therefore able, by its instinctive reaction against extravagant movements on the one side or the other, to keep the ship of state on an even keel." It must be remembered that most of these factors are not present in India.

The executive power of the Union is vested in the President and a Council of Ministers. The Indian President is intended to be only the nominal head of the state and not the real head of the state and government like the American President. The Indian President, like the British monarch, holds the most exalted and dignified office in the country which carries the greatest amount of prestige and spectacular show. All the powers vested in the President by the constitution are expected to be exercised by him on the advice of his ministers responsible to Parliament. It is significant that the constitution does not contain any specific provision to that effect. It is hoped that a good and healthy and strong convention would be established in this regard. It is the good fortune of India that, just at the initial stage of the working of our new constitution, we have as our President a well-meaning, unassuming stalwart who has made tremendous sacrifices for the cause of India's freedom and who is personally not ambitious of exercising power in Dr. Rajendra Prasad. We are equally fortunate in having as our first Prime Minister of free independent India Sri Nehru, who is one of the tallest among the statesmen of the world. The present President and Prime Minister have done well in carrying on the government of the country on the model of British parliamentary democracy, adopting a number of useful and healthy conventions. It is to be hoped that their successors also would emulate the noble example set up by these two stalwarts. But there can be no excuse whatsoever for the framers of the constitution for the serious and deliberate omission of an article to state clearly the relationship between the President on the one hand and the ministry on the other. The framers had the example of the French constitution before them which clearly states that the powers

vested in the President shall be exercised only on the advice of his responsible ministers.

The qualifications for the President are as follows : He must be a citizen of India, must be not less than thirty-five years of age, must be qualified for membership of the House of the People (Lok Sabha). Further, he must not hold any office of profit under any government throughout the territory of India, whether federal state, or local. He must not be the governor of a state, Rajpramukh or Upa-Rajpramukh, minister, either in the Union or in any State government. He must not be a member of either House of Parliament, or of any House of the State Legislature. If he is already a member of any such legislature he must resign his membership before he enters upon his office as President.

The process of election is original. He is elected indirectly by an electoral college consisting of (1) the elected members of both Houses of the Union Parliament ; and (2) the elected members of the Legislative Assemblies of all the constituent States by secret ballot, according to the system of proportional representation by means of the single transferable vote.

The method of election is complicated owing to the need of providing equality of representation among the States. Each member of the Legislative Assembly of a State will have a number of votes calculated as follows :—

$$\left.\begin{array}{c}\text{Total population of the State}\\ \text{Total number of elected members}\end{array}\right\} \text{ divided by } 1000.$$

The votes of each member of Parliament will be as follows :—

$$\frac{\text{Total number of votes assigned to elected members of the State Assemblies}}{\text{Total number of elected members of both Houses of the Parliament}}$$

The Indian President is not elected directly. The main reasons for not providing for the direct election by adult suffrage are : (1) The President is not expected to wield or exercise any real power which will be exercised as in Britain by the ministry. Therefore; it was considered quite unnecessary to involve the country in a tremendous waste of time, effort and money over periodical presidential elections. (2) Further, India is almost a subcontinent with crores of enfranchised citizens ; it will be very difficult to make provision for a suitable electoral machinery for the purpose of a smooth and successful presidential election. (3) Moreover, a directly elected President would like to exercise real power and would not be content to be a mere ornamental instrument in the hands of ministers. If he is popular and commands the respect and esteem of his countrymen, he would be scheming and intriguing against one party or another for the purpose of getting real power. (4) As real governmental power is entrusted, either by implication or by specific provisions in the constitution to the ministry and the parliament,

and as none of those agencies would be willing to part with power, it is unnecessary and inadvisable to have a direct election for the President.

In the U. S. A., the President is elected directly. His being elected directly by means of an electoral college formed for that very purpose whose members are elected directly by the people at large, and on account of the fact that the American system is based on the doctrine of the separation of powers, he is independent of both the legislature and the judiciary. He is the real executive head of the state ; he holds one of the greatest and most powerful political offices in the whole world, the most glittering prize in the service of the American nation. As he is the real head of the government, he is looked upon as the leader of the nation, giving the country leadership and guidance. His public statements and actions are watched with the greatest interest all over the world. He exercises real power on his own responsibility, while the Indian President is expected to be the symbolic head of the State lending dignity and prestige.

The Indian President holds office for a term of five years from the date on which he enters upon his office. He may resign earlier by writing a letter of resignation in his own hand addressed to the Vice-President But, notwithstanding the expiry of his term, he continues to hold office until his successor enters upon his office. He may also be removed from his office before the expiry of his normal term by impeachment. The resolution of impeachment must be supported by a two-thirds majority in both Houses of Parliament.

The term of office of the American President is only four years, subject to eligibility for re-election only once. The term of office of the French President both under the Third Republic as well as in the Fourth Republic is seven years subject to eligibility for re-election only once. The term of office of the President of the Federal Republic of Western Germany (1949) is five years, subject to eligibility for re-election for a consecutive term only once The Indian President holds office for a period of five years from the date on which he enters upon his office and he can be re-elected any number of times either consecutively or otherwise (Article 57). The provision for the re-election of the President any number of times without limit is an objectionable one in our constitution and is likely to endanger the independence of the judiciary for, according to the constitution, the power to appoint the judges of the Supreme Court and of the High Courts in the States is vested solely in the President. Article 124 which creates the Supreme Court of India and prescribes the maximum number of judges of the court as eight including the Chief Justice, and which is silent on the minimum number of the judges of the Court, empowers the parliament to increase the number of judges. Now, if the President is allowed to be re-elected any number of times without limit and if the government is faced with a hostile majority of the judges, and if the actions of

the executive or the laws enacted by the parliament should be declared *ultra vires* of the constitution, the constitution as it now stands provides an easy method of overcoming the opposition of the judges by resorting to the device of packing the Supreme Court with men of the proper political complexion and getting a favourable verdict for all high-handed actions of either the executive or those of the legislature. The American constitution also, which created the Supreme Court, did not prescribe the number of judges of which it should be composed. The decision of that matter was left inferentially to the Congress and this omission in the constitution provided an opportunity for the party in power to tune the court in its favour. For instance, if the President and the Congress were agreed, it is easy first to pass an act increasing the number of judges of the Supreme Court and then to appoint a sufficient number of new judges of the right political complexion in order to win a favourable verdict for all the actions of the Congress and the executive. This device of 'packing' the court had, in fact, been sometimes tried even in U.S.A. For instance, in 1866 Congress reduced the number of judges of the Supreme Court from ten to seven to deprive President Johnson of the opportunity of making appointments. In 1869, the number of judges was increased to nine. This device of securing a favourable verdict for the administration by increasing the number of judges and then "packing" it is a standing invitation and an almost irresistible temptation to the party in power to tune the court in its favour. But a frequent use of this method will be destructive of the spirit of the constitution. It is common knowledge that the success of the New Deal Legislation of the late President Roosevelt was largely due to the fact that he was re-elected, in spite of the well recognised convention, for three terms consecutively ; and that gave him an opportunity to try to tune the court in favour of this government. It is quite conceivable that the parliament at the centre might pass a law increasing the number of judges and the President might appoint as judges qualified men of the party in power in which case the independence and impartiality of the judiciary will certainly be seriously doubted and questioned. Therefore the provision for the eligibility of the President any number of times is fraught with serious consequences.

The Indian President can be removed before the expiry of his legal term by the process of impeachment only for the charge of violation of the constitution. The charge may be preferred by either house of parliament by a resolution moved by not less than one-fourth of the membership of the house and adopted by a two-thirds majority. When such a resolution has been passed by one house, the other house must investigate the charge or cause the charge to be investigated. The President has the right to appear and to be represented at such investigation and he continues as the President during the period of investigation. At the end of the investigation, if a resolution is passed supported by a majority of at least two-thirds of the total membership of the investigating house, declaring that the charge against the President has been sustained, the President can be removed from his office on and from the date of

the said resolution. It must be remembered in this connection that the President is not answerable to any court of law for the exercise of his powers and the performance of his rights and duties.

While the Indian President can be impeached for the charge of violation of the constitution only, the President of the U.S A. can be impeached for treason, bribery, or other high crimes and misdemeanours. Further, in the U.S.A., the Senate acts as High Court presided over by the Chief Justice of the Supreme Court. The charges against the President must be preferred only by the House of Representatives. A two-thirds majority of the members present is enough for conviction. There is also difference in the penalty. In the U.S.A., the President, on conviction after impeachment, is not only removed from the office but also disqualified to hold and enjoy any office of honour, trust or profit under the government of the U.S.A. In addition, he is also subject to legal penalties according to law. But so far only one President, Johnson, was impeached (1868) ; and he too was acquitted.

The salaries and allowances of the Indian President are not to be diminished during his term of office. His salary as prescribed in the Second Schedule of the constitution is Rs. 10,000 per mensem, apart from rent free official residence and other specified allowances.

The Powers of the President can be enumerated thus : Like the British monarch, the Indian President forms a part of the executive, legislative and judicial mechanism.

The executive authority of the Union is the President who exercises it either directly or through officers subordinate to him in accordance with the constitution. The constitution has, however, provided for a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. Thus, the President is required or expected by the framers of the constitution to exercise his powers and perform his functions with the advice of his Council of Ministers. But the important question arises as to whether the President is always bound to accept the advice of the Council of Ministers. In the absence of a provision to the effect that the President shall exercise his powers in accordance with the advice of his ministers responsible to Parliament it can be presumed that the President is expected to wield some real powers.

The executive power of the Union extends to all those matters with respect to which Parliament has power to make laws and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement. But such executive power does not extend to either Part A or Part B States, with regard to those matters wherein the State legislatures have the exclusive power to make laws.

The supreme command of the defence forces is vested in the President and he is to exercise this power according to laws made by Parliament. All executive action of the Government of India must be taken in the name of the President.

He has considerable patronage at his disposal. He appoints (1) the Prime Minister at his discretion, and other ministers on the advice of the Prime Minister ; (2) the Attorney General of India ; (3) the Comptroller and Auditor General of India ; (4) the judges of the Supreme Court and of the High Courts of the States ; (5) the Governor of a State ; (6) the Union Public Service Commission ; (7) the Finance Commission ; (8) the Election Commissioners ; (9) the Special Officer for Scheduled Castes and Scheduled Tribes ; (10) the Backward Classes Commission ; (11) the Commission on language ; (12) the Ambassadors and other diplomatic representatives. He represents India in international affairs. He receives ambassadors and other diplomatic representatives of a foreign state who have to present their credentials to him.

He forms a part of the legislature, though he should not be a member of Parliament. The legislative power of the Union is vested in the President and a Parliament consisting of two Houses. The President has (1) the power to nominate twelve members to the Council of States and two Anglo Indians to the House of the People if no Anglo-Indians otherwise get themselves elected to that House ; (2) power to summon, prorogue and dissolve Parliament ; (3) power to summon even a joint session of both Houses of Parliament ; (4) the right to send messages to or address both the Houses of Parliament at the opening session ; (5) the power to assent to legislation and power to veto Union Bills as well as State Bills reserved for the assent of the President ; (6) power to sanction the introduction of certain legislative measures, (*a*) involving changes in State boundaries, (*b*) Money Bills, (*c*) Bills affecting taxation in which the States are interested, (*d*) State Bills restricting freedom of trade ; (7) power to cause certain statements and reports to be placed before Parliament so that Parliament might have an opportunity to take suitable action on them, chief among such statements and reports being (*a*) the annual Budget and supplementary Budget, if any, (*b*) the report of the Comptroller and Auditor-General of India relating to the accounts of the Government of India, (*c*) the recommendations of the Finance Commission together with a detailed statement of the action taken thereon, (*d*) the annual report of the Union Public Service Commission together with the statement of reasons as to why any advice of the Commission has not been accepted, (*e*) the report of the Special Officer for Scheduled Castes and Scheduled Tribes, (*f*) the report of the Commission on Backward Classes Commission with a memorandum explaining the action taken thereon ; (8) the power to legislate by ordinance[1] during the recess of Parliament (of course on the advice of ministers or in his discretion). When the President is satisfied that circumstances exist in the country which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances may require. It must be noted in this connection that an ordinance has the same force and effect as an Act of Parliament. It must be placed before both Houses of Parlia-

[1] Article 123.

ment ; and it can be withdrawn at any time by the President. It is valid only for six weeks after the reassembling of Parliament, unless resolutions disapproving the ordinance are passed by both Houses of Parliament earlier. It is interesting to note that (1) the President is the sole judge to decide on the necessity for promulgating an ordinance ; (2) his decision on the matter cannot be questioned by anybody, even by a court of law ; (3) no maximum time limit has been prescribed for the duration of an ordinance. Though a period of six weeks after the Parliament reassembles is mentioned as the maximum time limit, the reassembling of the Parliament itself can be postponed up to a period of six months. Therefore, it may safely be said that this ordinance making power might be exploited by an unscrupulous President backed up by an equally ambitious and unscrupulous ministry, particularly when the ministry is really unpopular both in the Parliament and in the country at large.

The emergency powers of the President (Arts. 352 360) form relics of the Government of India Act of 1935. Part XVIII of the Constitution deals with the emergency powers of the President. It speaks of three kinds of emergencies : (1) in which the security of India or any part thereof is threatened either by war or by external aggression or by internal disturbance ; (2) in which the failure of the constitutional machinery in a State or States is reported ; (3) in which the financial stability or credit of India or any part thereof is threatened. In all these cases of emergency, the President has been empowered to issue a Proclamation of Emergency and to take such steps as are deemed necessary to meet the emergency.

The following points must be noted in connection with this Proclamation : (1) A Proclamation of Emergency will be valid for two months. Such a proclamation may also be issued at a time when the House of the People is dissolved or the dissolution of the House of the People might take place during the period of two months without a resolution approving the proclamation being adopted by the House of the People, though the Council of States might have passed it. In such a case, it shall cease to operate at the expiry of 30 days from the date of the meeting of the House of the People after reconstitution. (2) There is no obligation imposed on the President to summon simultaneously with the issue of the proclamation a meeting of the Parliament, if it is not in session ; nor is there any obligation on the part of the President to order fresh general elections if the House of the People is already dissolved, with the result that if the President so desires, it is possible to carry on government by proclamation for two months, if the House of the People is not dissolved, and for six months, if it has been already dissolved.

Let us first consider *the effects of a proclamation of emergency arising out of war, or external aggression or internal disturbance* Article 352 provides for a proclamation of emergency arising under war etc. The proclamation can be revoked by a subsequent proclar-

mation. The proclamation must be placed before each House of Parliament and it shall cease to be valid at the expiration of two months unless it has been approved by resolutions of both Houses of Parliament. The proclamation of emergency will have the effect of practically turning the federal constitution into a unitary one. When it is in operation, the executive power of the Union extends to the giving of directions to any State regarding the manner in which its executive power is to be exercised. Union Parliament can pass laws including imposition of taxes on any matter enumerated in the State List. The President can order or direct that the provisions of Articles 268 to 279 of the constitution shall cease to operate. The right to various kinds of freedom guaranteed by Article 19 may be suspended. Even the right to move the Supreme Court for the enforcement of fundamental rights may be suspended.

The effects of a proclamation of emergency arising in the e ent of the failure of constitutional machinery in a state are that the President will by so doing assume to himself the powers and functions of the Government. He shall also declare that the powers of a particular State legislature shall be exercised by the Parliament. It must however be noted that the President cannot assume to himself any of the powers vested in the High Court. Such a proclamation ceases to be valid after the expiry of six months ; but the duration of the proclamation can be extended for six months at a time and the maximum period prescribed is three years.

The results of a proclamation arising as a result of financial emergency are that, in the event of a declaration of financial emergency, the executive can give directions as to the manner in which the executive power of the State shall be exercised and also directions to observe canons of financial propriety. The President may reduce the salaries and allowances of all Union and State servants, not excluding those of the judges of the Supreme Court and of the High Courts. Further, the President may also require that all financial bills should be reserved for his consideration after they are passed by the State legislature.

Like the British monarch, the Indian President has got the power to grant (*a*) pardons,[1] either full or conditional, in any punishment meted out by the law courts, (*b*) reprieves (stay of execution of a sentence), (*c*) respites (awarding a lesser punishment than the one meted out by the law courts), (*d*) remission of punishment (reducing the period of sentence which the offender is undergoing), (*e*) suspension of punishment, (*f*) the commutation of a sentence (changing to a lesser punishment of a different kind, for instance from death to transportation or from transportation to rigorous imprisonment). But the President has no power to grant general amnesty to political offenders. Such a power is reserved to the Parliament.

[1] Article 72.

Some miscellaneous powers are also given. The President is empowered, in order to enable the machinery of government to work smoothly and systematically, to make rules (*a*) regarding the procedure with respect to joint sessions of Parliament, (*b*) for the convenient transaction of business by the ministers, (*c*) regarding the procedure to be adopted for authenticating orders and instruments made in his name, (*d*) fixing the number of members of the Union Public Service Commission, their conditions of service and tenure. He has also been given power to take action in some cases, for a short period, until Parliament passes a law regarding such matters : for instance (*i*) sanctioning grants-in-aid to States which are in need of help, (*ii*) the percentage of income-tax proceeds to be assigned to and distributed among the States, or (*iii*) framing rules governing recruitment and conditions of service of persons in the Union Government Further, he is also empowered to refer any question of public importance to the opinion of the Supreme Court under Article 143. Article 317 (1) provides for one of the methods of removing the chairman or any other member of a Public Service Commission. It states specifically that when the ground for removal is misbehaviour such an officer shall be removed from his office by the President only after making a reference to the Supreme Court and receiving a report thereon after an enquiry.

A careful study of the formidably long list of powers vested in the President has created an impression in the minds of most constitutional lawyers that the constitution bristles with enough loopholes which might be taken advantage of by an inordinately ambitious and unscrupulous president with the object of becoming a dictator at least for a short period. But the history of the presidency from 1950 onwards under Dr. Rajendra Prasad has cleared away all doubts, real and imaginary, regarding the possible abuse and misuse of the powers vested in the presidency. Right from the beginning, the President has played the role of a constitutional head of the state like the British monarch allowing the Prime Minister and the other ministers to carry on the government in his name and at the same time exercising the constitutional rights of a head of the state such as the right to be consulted, the right to encourage and the right to warn. Like the British monarch, he has only the symbols of power while the substance of power is with the ministry and the Parliament. But this should not be taken to mean that the President is a mere cipher, nothing more than an ornamental head occupying the stage of the constitutional machinery. He performs a number of useful functions, chief among them being the selection of the Prime Minister. It is his duty to send for the leader of the majority party in the House of the People to form the government. Though he does not preside over the meetings of the Council of Ministers, he keeps himself in close touch with the Prime Minister and thus he is kept informed of all the proceedings of the ministry by the Prime Minister ; and if the President should be a man of great personality endowed with considerable

capacity for initiative and leadership, he can exercise his right to offer to the Prime Minister healthy and constructive criticism of the policy of the government. Whether his criticism and warning would be effective or not would depend very largely on his personality and his capacity, skill and tact as a person and not as the President and the attention that he devotes to the affairs of the state.

Though, for the time being, there is not much scope for the President to exercise his discretion in the selection of the Prime Minister, situations may not be wanting when he might have a chance to exercise his discretion in the choice of the Prime Minister *viz.*, in the event of no one political party commanding an absolute majority in the House of the People.

By virtue of his position and status as the highest dignity of the land and the first citizen of the Republic, he can always give the government the benefit of his accumulated knowledge, ripe experience and disinterested judgment on affairs of state. Further, Parliamentary democracy requires two personalities, one of whom should be the Head of the State completely immune from criticism and challenge, and above the risk of a rebellion or the threat of a revolution ; while the other should be the Head of the Government liable to criticism and challenge by the Opposition and liable also to be turned out of office the moment he loses the confidence of the majority party in the House of the People. The former object is served effectively by the President.

Like the constitution of the U.S.A , Article 63 of the Indian Constitution provides for a Vice-President of the Indian Union in addition to the President. Again, like the American Vice-President, the Indian Vice-President is the ex-officio chairman of the federal upper house, the Council of States (Rajya Sabha). But, in many respects, there is a vast difference between the American Vice-President and the Indian compeer. In the U.S.A the President and the Vice-President are elected in the same manner and at the same time and for the same term of office. In other words, both are elected simultaneously on a party ticket for a term of four years by the same popularly elected special electoral college formed for that very purpose. The American Vice-President, though elected for four years, is subject to earlier removal only by the process of impeachment. Further, in the event of any vacancy arising in the office of the President by reason of his (*a*) removal by impeachment or death or resignation, (*b*) inability to discharge the duties and exercise the powers of his office, the Vice-President becomes the President and remains as such for the unexpired portion of his predecessor's term, as did Truman on the death of President Roosevelt. But, the Indian Vice-President is elected for a term of five years by the two Houses of Parliament at a joint session by secret ballot, in accordance with the principle of proportional representation by means of the single transferable vote.

The candidate for the office of the Vice-President must be (1) a citizen of India ; (2) not less than 35 years of age ; (3) qualified for election to the Council of States (Rajya Sabha) ; (4) he must not hold any office of profit under any of the Governments, within the territory of India, whether federal, or state or local ; (5) he must not be a member of either House of Parliament or of any House of the State Legislature. But if he is already such a member, he has to resign before he enters upon his office as Vice-President.

As in the U.S.A., the Indian Vice-President is the ex-officio chairman of the Upper House and presides over its sessions and draws his salary in that capacity. However, when the Vice-President acts as the President of the Indian Republic or discharges the functions of the President, he shall not perform any of the duties of the office of the chairman of the Council of States and shall not be entitled to any salary or allowance payable to that office.

In the event of any vacancy arising in the office of the President by reason of his death, resignation or removal by impeachment, the Vice-President shall act as President only for six months until the new President is elected and enters upon his office. When the President is unable to discharge his functions owing to illness, absence, insanity or any other cause, the Vice-President shall discharge the functions until the date on which the President resumes his duty. Whenever the Vice-President acts as President and discharges the duties and functions of the President, he will have all the powers and immunities of that office and is entitled to the same emoluments, allowances and privileges as the President, or to such as may be prescribed by the Parliament by law. Like the President, the Vice-President also, before he enters upon his office, must take an oath or make an affirmation of loyalty and allegiance to the Constitution of India.

The Vice-President holds office for a term of five years as already stated. But, he may however resign his office earlier by a letter of resignation addressed to the President. He may also be removed from office before the expiry of his normal term by a resolution of the Council of States, adopted by a majority of all the members of the Council and agreed to by the House of the People. But no resolution for the removal of the Vice-President can be moved without giving at least 14 days' notice. The Vice-President shall, however, remain in office until his successor enters upon his office. All doubts and disputes about the election of the President and the Vice-President must be inquired into and decided by the Supreme Court whose decision on the matter is final.

The present Vice-President is the distinguished scholar Dr. S. Radhakrishnan, who was elected unopposed on April 25, 1952.

As in England the real executive in India is the Ministry. Article 74 of the Constitution provides for the cabinet system of government on the British model. The clause runs thus : "There

shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions." Article 75 prescribes the method of appointing the Council of Ministers, according to which the President appoints first the Prime Minister and then, on the advice of the Prime Minister, he appoints the other ministers. The ministers hold office during the pleasure of the President The Constitution provides for the collective responsibility of the ministers to the House of the People (Lok Sabha). The members of the Federal Cabinet may be chosen from among persons not already members of the Parliament. But, as in England and the Commonwealth countries, they must become members of either House of Parliament within a period of six months or they must resign. But the ministers may attend the meetings of both Houses of Parliament, whether they are members or not. Before a minister enters upon his office, the President administers to him the oath of office and secrecy as prescribed in the Third Schedule, to the effect "that I will bear true faith and allegiance to the Constitution of India as by law established, that I will faithfully and conscientiously discharge my duties as a minister for the state of... . and that I will do right to all manner of people in accordance with the constitution and the law without fear or favour, affection or ill will."

Though all executive action must be taken in the name of the President, as in England, it is expected that a minister will hold himself responsible for all the acts of the President. Since the doctrine of ministerial responsibility which rests on convention in Britain is provided for by constitutional provisions[1] here, the ministers can remain in office only so long as they command the confidence of the majority party in the House of the People. Under normal circumstances there is not much scope for the President to exercise discretion in the selection of the Prime Minister. In Britain, the monarch has invariably to choose as his Prime Minister the leader of the majority party in the House of Commons ; in India also the President has to select the leader of the majority party as Prime Minister. Only in the event of one political party not commanding an absolute majority in the House of the People, the President can exercise his discretion and send for the leader of any of the political parties to form the Government with help of some party or other. So, for all practical purposes, the relations between the Indian President on the one hand and the Council of Ministers with the Prime Minister on the other hand are expected to be the same as those prevailing in England between the monarch and the British cabinet. It is very regrettable that the constitution does not contain a single word about whether the President is bound to accept the advice of the Council of Ministers or not. It would have been much better if the framers of the constitution had simply inserted one clause on the model of the Canadian constitution that our constitution is similar in principle to that of the United Kingdom. But, on the other hand, they have

[1] Article 75.

taken laborious pains to include some of the conventions of the British constitution while a number of others are presumed to be incorporated.

Though there is a striking similarity between the features and functions of the British Cabinet and those of the Indian, some of them presumed and some specifically mentioned in the constitution, the differences between the two are equally striking. In Britain responsibility of the ministers to the House of Commons rests on convention, while in India it is specified in Article 75. The British Prime Minister not only selects his colleagues but also allots their portfolios. But, in India, Article 77 of the Constitution empowers the President to make rules for the more convenient transaction of the business of the Government of India and for the allocation among ministers of the said business. Here, also, it is expected that the President will exercise his power to make such rules only on the advice of the Prime Minister. The members of the British Cabinet are appointed from among the members of Parliament and no minister has a right to attend the meetings of a House of which he is not a member. Further, in the United Kingdom, the cabinet stands as a unit, a unit as regards the sovereign and as regards the Parliament: "Its views are placed before the sovereign and before the Parliament as if they were the views of one man. It gives its advice as a single whole both in the royal closet and in the hereditary and representative chamber." Whenever the monarch is informed of any decision of the cabinet, it is communicated to him as a decision of the cabinet as a whole. But, in India, according to Article 78, the Prime Minister is in duty bound, if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the Council as a whole. The Prime Minister is bound to communicate to the President the decision of any one particular minister and it is open to the President to treat such a decision as not representing the decision of the cabinet as a whole and he may ask the Prime Minister to place the decision of the individual minister for consideration of the cabinet as a whole. One redeeming feature of this particular aspect of the relations between the President on the one hand and the ministers on the other is that nowhere in the constitution is the President empowered to override either the decision of any individual minister or the decision of the cabinet as a whole. The constitution makes specific provision for the office of the Prime Minister. It is interesting to note in this connection that in Britain, the office of the Prime Minister was practically unknown to the constitution until 1905 when the Prime Minister was given precedence immediately after the Archbishop of York by a Royal proclamation in December 1905.

A Retrospect. Let us now turn to consider the administrative system as it functioned in the past and as it exists now. It was rudimentary in the early days of the Company.

In each factory, the servants consisted of factors, merchants, writers and apprentices who kept accounts. Commodores were in charge of warehouses. Salaries were low, but private trade was allowed. There was common mess and a system of common prayers. Mandelslo who was in Surat in 1638 gives a good account of their hospitality. The Company's servants stationed in the different centres usually contracted with the company for the supply of goods which they themselves got from Indian manufacturers at much profit. Till Cornwallis removed those abuses, the prices were high, quality of goods poor and the supplying Indians were oppressed. Cornwallis made the commercial residents representatives of the Company only as they had been originally and they ceased to be contractors. The old practice of engaging factors and merchants for short periods stopped in the seventeenth century and promotion by seniority appeared. The service was popular for, in spite of low salaries, fortunes could be amassed by private trade carried on with loans from home or from the Indians. The Company, after vain attempts to put it down, had to permit it. The servants also got presents from Indian rulers for favours done to them. Appointments were by patronage of individual Directors. Furber (*John Company at Work*) refutes the theory of these servants carrying plunder from India. Though they amassed wealth, they gave large presents to chiefs and lived so extravagantly that they had to borrow large sums from Indian money-lenders at heavy interest.

As a trading body, the Company had to work out a commercial system. Unlike the Dutch and the French Companies, the Company was not helped by the British government, unless national interests compelled it. It had to carry on a struggle with commercial rivals and safeguard its ships by sufficient defence equipment. It has been rightly remarked that it developed "in the chilly, but invigorating, atmosphere of individualism." As it was not possible to finance the purchase of Indian goods by selling European goods, the Company had to export gold ; but, lingering mediaeval prejudice against the export of bullion made the British government restrict it. After this, the Company had to keep in India part of the capital for purposes of trade and sent home only the profits. This was called Investment.

The records of the India Office show that the early voyages gave an annual dividend of 20% on the average. Mr. Ruthnaswamy[1] traces the elaborateness with which governmental matters were reduced to writing in the later Government of India to these days of commerce when full accounts had to be rendered to the Directors. The commercial character of the Company long affected its policy and administration The meetings of the Councils were more like those of a Board of Directors. Jaquemont, a French traveller, commenting on the elaborate reports called the government 'a government by stationery.' Lord Curzon condemned this kind of minute-writing

[1] *Some Influences that made the British Administrative system in India.*

as "the most perfect as well as the most pernicious in the world." The commercial attitude of the Company was also seen in its objection to wars and extravagant administrators, and its dealings with the "country powers."

As Mr. Ruthnaswamy points out, the Company started with no preconceived notions and took up new duties one after the other under the influence of circumstances. Hence, it built itself up as it developed. When it came to have administrative duties, its servants, besides looking after commerce, had also to do revenue collection, administer justice and carry on diplomacy with Indian states. The military was already separated from the civil service.

Dr. Ghoshal (*Civil Service in India under the East India Company*) shows that the servants of the Company, chosen because of their influence with the Directors, were ill-educated and had no manners or morals. The right of patronage was much abused. A Scottish member of the Board of Directors was able to provide jobs for most of his nineteen children. The servants degenerated into fortune-hunting adventurers. Building on foundations already laid by Warren Hastings, Cornwallis purified the services. He insisted on integrity and justice.

The commerce of the Company gradually became less and less important. As Wilson points out in his continuation of Mill's *History of India*, distress due to the "Continental System" of Napoleon led to the abolition of the Company's trade monopoly except with China in 1813. The strong ideas of free trade when the charter was renewed in 1833 led to the abolition of even this monopoly of Chinese trade. Thus, the Company lost its last commercial vestiges. But its political powers were retained and its dividends continued to be charged to the revenues of India.

Because of their duties, the education and training of the servants of the Company became important. Wellesley founded a college at Fort William to teach Indian languages and customs in a course of three years. But this scheme was rejected by the Directors and the college ended. Later, in 1806, the East India College in London, called the Haileybury College, was set up in conformity with the ideas of Wellesley. This college maintained a chair in political economy long before universities set up such chairs. Malthus was one of the teachers in it. The civilians who studied here were deeply influenced by writers like Adam Smith and Ricardo. Graham Wallas points out that the development of the science of public administration owes much to the eminent servants of the Company. Unlike the generation of Lord Cornwallis, a new race of administrators grew up by Lord Hasting's time who tried to understand India and were practical administrators. Some of them like Elphinstone and Metcalfe were even scholars. The Foreign Secretary of Dalhousie, Sir Henry Elliot, worked on Indo-Muslim History. Thomason worked out a system of village vernacular schools and set up the Engineering College at Roorkee. The brothers Lawrence, Sir Herbert Edwards,

John Nicholson and Sir Richard Temple did valuable work in organizing the new province of the Punjab. Sir Thomas Munro worked in Madras. Henry Lawrence, Sleeman and Outram cherished respect for the old ruling families and believed that native rule would be more beneficial than foreign one.

The improvement in the administrative services was helped by the introduction of appointment by competition in 1853. The *Cambridge Short History of India* laments that this did not produce the devoted and sympathetic servants of the olden days who had sprung from families connected with India and who maintained personal touch with the villagers. In this sense, the Indian Civil Service is the oldest civil service in the world.

The Act of 1833 embodied the principle of Indianisation. Before this, all posts carrying more than Rs. 500 per annum were to go only to the covenanted[1] servants of the Company. As no Indian could belong to this, Cornwallis's policy of excluding Indians was maintained. This Act of 1833 relaxed this. Ramsay Muir calls this "a declaration without parallel in the history of a ruling race". He says that the Queen's proclamation of 1858 promising Indianisation contained nothing that had not been embodied earlier in legislation or in practice. But, in spite of this, competition excluded Indians from all high offices, as the examination and the training were in England. In 1854, the services were divided into Covenanted and Uncovenanted. The former included all the high posts. The Indian Civil Service Act passed by Canning reserved posts in this for the covenanted services. In the uncovenanted services, Indians could be appointed. The Haileybury College was closed in 1858.

Lytton passed a Statutory Civil Service Act of 1879 as a belated attempt to carry out the promise of Indianisation. Indians from the uncovenanted services were nominated to a Statutory Civil Service. But this scheme failed, as these nominees could not hold their own against those who came by competition, and very few were able to climb to high posts. In 1886, the Aitchison Commission suggested, in the time of Lord Lansdowne, that the Statutory Civil Service should be abolished and there should be set up an imperial service recruited in England and a provincial and a subordinate service recruited in India. The main aim still was Indian agency to be employed under English supervision. The Islington Commission, appointed in 1912 to consider the matter again, reported in 1917; but its report was already out of date, as the Declaration of August 20 promised increased association of Indians with the government. The Lee Commission of 1923, in the time of Lord Reading, laid down a rate of Indianisation according to which the European element was gradually to be displaced from all services except the I.C.S., the Police and certain technical branches like engineering. To

[1] Called so, as these servants entered into a covenant not to trade or receive presents. This covenant became necessary as the Company had developed into an administrative body.

these posts, Europeans were attracted by favourable financial concessions. After the Act of 1935, recruitment by the Secretary of State was limited to the I.C.S., the higher Police and the higher civil branches of the I.M.S.

In 1947, after Independence, the Government of India guaranteed the pay and the rights of existing officers and also allowed retirement on proportionate pensions. In place of the I.C.S. an Indian Administrative Service was set up. An Indian Police Service was also set up. Owing to the development of diplomacy with foreign countries, an Indian Foreign Service grew up.

Dalhousie's administration was a landmark in the development of departments. Till his time, the departments were home, foreign, military and finance. Dalhousie created the Public Works Department in 1855. He also inaugurated uniform postal rates in 1853. In the Mughal period, official messages alone were transmitted by relays of runners and the Company also confined its earlier postal arrangements to official mail. The electric telegraph system began with the first line between Calcutta and Agra in 1857. Dalhousie organized in 1854 a system of vernacular schools and Departments of Public Instruction were set up in each province. He also arranged for the sending of annual reports from the provinces and opened the Medical Service to Indians.

Departmentalism in the executive council began only in Lord Canning's time. This enabled comparatively trivial matters to be disposed of by the departmental members who were familiar with the matter without troubling the whole council. Lord Lawrence created a legislative department. Lord Mayo created the department of revenue, agriculture and commerce. Lord Curzon founded a new department of commerce and industry. He appointed an Inspector-General of Agriculture in 1901 ; but this post was abolished in 1912. In 1910, a department of education was set up, and, in 1921, a separate department of industries. After 1937 the foreign department was renamed department of external affairs. The army department was renamed defence department. The political department which dealt with the Indian States was in the hands of the Governor-General along with the foreign department. Now it was separated and came exclusively under the control of the Crown Representative. In 1937, a department of communication was set up. The work of the department of industries was split up amongst others. The railway board was really a department of the government.

The commander-in-chief was incharge of the army department. The department of commerce and industry controlled railways, posts and telegraphs, mines and factories. The departments of education, health and local government were mainly supervising provincial activities. There was also an eccleciastical department. It was abolished in 1947 after Independence. There were nine departments by 1937—defence, finance, railways, communications, commerce,

labour, legislation, education, health and lands. The officers were mainly borrowed from provinces, while the lower ranks were supplied by the secretariat. After 1935, the Wheeler Committee which enquired into the system of recruitment to the secretariat recommended the continuance of importing officers already serving in the provinces except for specialized departments like finance. Each department has a secretary, deputy and under-secretaries, superintendents and assistants.

There were also a number of other central government agencies. The archaeological department had existed from 1862. Curzon developed a scientific and steady policy and appointed Sir John Marshall, the famous archaeologist, as the head of the department. He also passed the Ancient Monuments Act to preserve old monuments. It may be remembered that Sir Alexander Cunningham had begun archaeological investigations by 1860. Organised geological survey began only from 1851 to explore the mineral wealth of India [1] The beginning of topographical survey was in 1767 when Clive appointed Major Rennel as Surveyor-General of Bengal. But modern methods began only from 1802. Statistical survey began in 1769. Sir William Hunter, Director-General of Statistics from 1870, published the *Imperial Gazetteer* and its provincial supplements. Sir George Grierson began the linguistic survey of India. Sir Joseph Hooker and Sir Arthur Shipley inaugurated respectively studies of fauna and flora. But, the zoological survey of India began only in 1916. The meteorological department was constituted in 1875 and has its headquarters at Poona. Scholars skilled in anthropology like Baines, Ibbetson and Risley did valuable work in connection with census reports which began in 1881. All these various departments are grouped under one or other of the principal departments.

The Company did not realize the value of forests and looked on them merely as source of revenue. There was reckless destruction. The historic forests of the Indo-Gangetic Plain were depleted. Dalhousie tried to stop this waste. Sir Dietrich Brandeis, the first Inspector-General of Forests, and his successors, organized the forest department from 1867. The department not only deals with government forests but devotes attention to forest education and research.[2] The posts and telegraphs department was placed on a commercial basis only in 1925-26.

Today. After Independence, nineteen ministries took the place of the old departments. These are home, states, external affairs, defence, finance, railways, transport, communications, commerce, law, information and broadcasting, industry and supply, labour, works, mines and power, food, agriculture, health, education and rehabi-

[1] It celebrated its centenary in 1951.

[2] Successive forest acts enlarged the functions of the department. For information regarding yield from forests, see *Imperial Gazetteer*, Vol. 3, Ch. II.

litation. The secretariat also had greatly expanded. On the recommendation of the Central Pay Commission of 1947, increased allowances have been given to central services to suit the rise in the cost of living.

As in England, the Indian Prime Minister and his cabinet form the real executive. But the term "Cabinet" is nowhere mentioned in the constitution which provides only for a Council of Ministers. By an Act of Parliament 1950, the Council of Ministers has been classified into three categories. It consists of, besides the Prime Minister, (1) Cabinet Ministers—receiving a salary of Rs 3000 p.m. with a monthly allowance of Rs. 500, (2) Ministers of State drawing a salary of Rs. 3000 p.m. and (3) Deputy Ministers receiving a salary of Rs. 2000 p.m.

In 1955, there were twenty departments of administration : Commerce and Industry, Communications Defence, Education, External Affairs, Finance, Food and Agriculture, Health, Home Affairs (integration of states being accomplished, the Ministry of States was absorbed into this), Information and Broadcasting, Irrigation and Power, Labour, Law, National Resources and Scientific Research, Production, Railways, Rehabilitation, Transport, and Works, Housing and Supply. A new Ministry of Iron and Steel was constituted in 1955 (May). This is to be incharge of the steel plants to be set up by the state at Rourkela (with German help), at Bhilai (with Russian help) and at Durgapura (with British help).

Strenuous effort is being made to relax the old stranglehold of "red tapism" on the administrative machine by encouraging telephone talks, personal interviews and conferences.

The Federal Legislature is known as the Parliament of the Union. According to Article 79 the Parliament of the Union consists of the President and two Houses known respectively as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). Thus like all other Federal Legislatures in other federal countries, the Union Parliament is bicameral in structure. The absolute necessity of a bicameral legislature in a federal state is well known to students of politics. While a unitary state can afford to have a unicameral legislature, a bicameral legislature is an inherent feature of a federal state. The Upper Chamber of the federal legislature represents the federating units on the principle of equality of representation, irrespective of size, population and resources and is generally regarded as the sheet-anchor of state interests ; while the Lower House represents the people on the basis of population. Though Article 79 speaks of the President as forming part of the Legislature, his position is very peculiar. Though he cannot himself be a member of either House of Parliament, he has been assigned an institutional status and is made to form, like the monarch in the United Kingdom, an integral part of the Union Parliament.

Apart from the bicameral structure of the Union Parliament, another feature of importance to be noted is that it is not completely

a sovereign legislature like the British parliament. Its legislative competence is confined to during normal times to such of those matters as are enumerated in the Union List and the Concurrent List. Besides, its supremacy is limited by the fundamental rights guaranteed to the citizens in Part III of the Constitution. But, notwithstanding these limitations on its legislative competence, the Union Parliament is the pivot of the whole machinery of government. For, during times of emergency and crisis, the Union Parliament is armed with vast powers and together with the President and the Council of Ministers, it is really, in the fullest sense of the term, the sovereign of the India State.

The Upper house of the Parliament is known as the Council of States or Rajya Sabha. Article 80 prescribes its maximum strength at 250 of which twelve members have to be nominated by the President while the other 238 will be representatives of the federating states. The twelve persons to be nominated by the President must be persons of considerable distinction and outstanding ability and practical experience in various fields such as literature, science, art, social service etc. Of the other elected representatives, those from Part A and B States are elected by the elected members of the respective legislative assemblies, while those from Part C States are elected by the elected members of the legislative assemblies in such of those states where there is provision for them ; and in others, the representatives are elected by electoral colleges whose members are directly elected on the basis of adult suffrage. The members are elected in accordance with the system of proportional representation by means of the single transferable vote. Actually, the Rajya Sabha consists of 216 members (145 elected from Part A States, 49 from Part B States and 10 from Part C States and 12 nominated by the President). As proposed by the Delimitation Commission of 1952, the number will be increased to 219 (by an increase of three members from Part A States).

An unusual feature of the Indian Council of States is that it does not accord equality of representation to the federating units ; but it is constituted on the basis of population slightly weighted in favour of the smaller units. This departure from the basic principle of federalism deserves special attention The U.S. Senate consists of 96 members on the basis of two representatives from each of the 48 constituent states. The Australian Senate consists of 60 members, 10 from each of the six federating states. The Swiss Council of States consists of 44 members, on the basis of two representatives from each of the 19 full cantons and one member from each of the six half cantons. The Canadian Senate, which is generally said to be a pale and slavish imitation of the British House of Lords, is also constituted on the principle of equality of representation not to the federating units as such but to the regions into which the whole Dominion is divided. The Canadian Senate consists of 102 members, nominated for life by the Governor-General on the advice of the Canadian

Cabinet, each regional area being represented by 24 members; there is also provision for an additional six members for Newfoundland which is now part of the Canadian Dominion. In the Indian Council of States, a component state is given representation on the basis of one member for each million for the first five millions of its population and thereafter only one seat for every additional two millions. It is said that we have provided for a Council of States not with a view to serving as a citadel of state interests but to serve the more general purposes of a second chamber like affording fuller and greater opportunities for calm and cool discussion of public questions, the revision and perfecting of legislative measures that had not received either enough attention in the lower house or passed in hot haste in a fit of exuberance or emotionalism, and the interposition or the introduction of the much-needed delay to prevent hasty and ill-considered legislation by the popular and more numerous house. It is further pointed out that the protection of the special interests of the federating units must be the common responsibility of the representatives of those States in both chambers of the Parliament. But it should not be forgotten that on questions affecting the interests of the States only, some of the bigger and more populous ones can easily outvote the smaller to the detriment of the latter.

Again, the provision for nomination of twelve members of outstanding ability and achievement is generally criticised as reactionary and undemocratic in an age of democracy and is bound not only to generate a conservative outlook but would constitute a reactionary element standing in the way of social, economic and national progress. But in view of the fact that men of outstanding ability are found to be, at any rate in our country, shy and will not emerge easily into the political arena and as it provides an easy way of securing the services of the very best men available in the country and as the number to be nominated is very small in comparison to the total strength of the House, the provision for partial nomination need not become a subject of adverse criticism. Further, the provision for indirect election as well as partial nomination will be helpful to secure the services of distinguished non party men who have otherwise no opportunity of serving the country. Again, it is in conformity with one of the essential characteristics of constituting a second chamber, namely, that the principle of its composition must be different from that of the lower house.

Like the second chambers in other federal states, the Council of States is a permanent or continuous body and is not subject to dissolution, for one-third of its members retire every two years so that at no time can it be said of the Council that its members are either wholly new or completely old. Further, it secures not only legislative experience and guidance to the government, but what is more, continuity of policy in certain vital matters in an age of lightning changes in political complexion following any general election. The provision for periodical retirement of a fraction of its members will secure new recruits to strengthen the council and also save it from

loss of touch with the latest currents of thought in the country at large. In every age and every country, there must be always a set of people of the ripest experience and disinterested judgment of public affairs who can always sound a note of warning to the younger, more excited and emotional elements "thus far and no farther." The presence of such men on the council will put a check on radical legislative schemes fraught with grave consequences.

A candidate for election to the Council of States must be a citizen of India, not less than 30 years of age, and must also possess such other qualifications as may be prescribed by Parliament. According to the Representation of the People Act of 1951, he must be a parliamentary elector in the state from which he seeks election. The disqualifications for membership of the Council of States are practically the same as those for all legislatures in India and are detailed below in connection with the House of the People. The Vice-President of India is the ex-officio Chairman of the Council of States. A parallel to this is found in the U S.A , where the Vice-President is the President of the Senate. As the American Vice-President is not a member of the Senate, so also the Indian Vice-President is not a member of the Council of States. Again, as the American Vice-President has only a casting vote in case of a tie, so also the Indian Vice-President has a casting vote only in the event of a tie. Though the Council has no power to elect its own Chairman, it is given the power to select one of its members as Deputy Chairman who has to preside over the Council in the event of its Chairman either acting as President of the Republic or in his absence due to any other reason. The Vice-President or the Deputy Chairman should not preside over the Council while a resolution for his removal is under consideration; but they have a right to speak in and otherwise take part in the proceedings of the Council without the right to vote. The Deputy Chairman can be removed from office by a resolution of the Council supported by an absolute majority of the total membership. The salaries and allowances of its Chairman and Deputy Chairman are determined by Parliament and are charged on the Consolidated Fund.

All questions are decided by an absolute majority of the members present and voting, except the Chairman or any other person acting as such, who can exercise his casting vote only in case of a tie. The quorum for the meeting of the Council is fixed at one-tenth of its total membership (*i e.*,) at twenty-five. Whenever there is no quorum, it is the duty of the Chairman either to adjourn or to suspend the meeting until there is a quorum.

The Council has co-ordinate legislative powers with the House of the People except with regard to Money Bills, which can be introduced only in the Lok Sabha. After approval by the Lok Sabha, Money Bills are sent to the Rajya Sabha which may suggest amendments within fourteen days of the date of receipt of the bills from the Lok Sabha. The amendments proposed by the Rajya Sabha are

not binding on the House of the People. If the money bills are not returned to the House of the People by the Council within the prescribed time limit of fourteen days, they are deemed to have been passed by both Houses in the form in which they were passed by the House of the People. Demands for grants are not submitted to the Council of States ; the sanctioning of public expenditure is an exclusive privilege of the Lok Sabha. Non-money bills can be initiated in any House, but must be approved by both. When a bill which has been passed by one House, is either rejected by the other, or is passed with such amendments as are not acceptable to the first House, or more than six months should elapse without the other House taking any action on the bill, Article 108 of the Constitution empowers the President to summon a joint session of both Houses in which the fate of such bill will be decided by an absolute majority of the total number of members of both Houses. As the strength of the House of the People is about double the strength of the Council, the will of the Lok Sabha will prevail over that of the Rajya Sabha. Thus, the Council has co-ordinate power with the other House in ordinary legislation only in law but not in fact Further, the Council can also exercise control over the government by moving resolutions, or adjournments or votes of censure or by asking questions and supplementary questions.

To sum up : The Indian Council of States has co ordinate powers with the Lower House in ordinary legislation only in theory, but not in fact ; and practically very insignificant powers in financial matters. This might lead to the conclusion that it is a body of practically no importance in the legislative mechanism, and that therefore it is a needless part of the legislature. It is too early to pronounce a final verdict on its practical utility as a second chamber. It has proved to be useful so far as a revisory and delaying chamber; and it has besides, the unique prestige of being presided over by Dr. S. Radhakrishnan, the philosopher-statesman of great international reputation. Further, consisting for the most part of the more aged, more experienced and wiser statesmen than the members of the Lower House, it is to be hoped that the Council of States will establish a name and reputation for itself as a reservoir of accumulated knowledge, ripe practical experience and worldly wisdom.

The Lower House of the Union Parliament is the House of the People now known as Lok Sabha. It is the popular House and corresponds in many respects to the British and Canadian House of Commons. Article 81 of the Constitution fixes its maximum strength at five hundred : nearly twice the strength of the Council of States. Its members are directly elected by the people on the basis of adult suffrage in territorial constituencies each returning one or more members. As in England, for purposes of electing the House of the People, the country is divided, for the most part, into single-member constituencies. According to the first Delimitation Orders, out of a total of four hundred and one constituencies, three hundred and fourteen are single-member constituencies, eighty-six double member

constituencies, and only one is a triple-member constituency. According to the constitution, the ratio between the number of members assigned to each territorial constituency and its population should be the same as far as practicable throughout India. The principle involved in the allotment of seats is one of equal proportion – the same principle followed with regard to the American House of Representatives. A single member constituency must have at least a population of half a million. The Constitution (First) Amendment Act of 1951 removed the maximum limit of parliamentary constituencies.

For the election of the House of the People as well as the Legislative Assembly of the State, the constitution has abolished communal electorates and, on India achieving Independence, she has become a secular State. But, the framers of the constitution did not forget altogether the need for protecting the interests of the backward classes. With this object, they have provided for special reservation of seats in the House of the People to Scheduled Castes and Scheduled Tribes in accordance with their population ratio for a period of ten years. There is also a special provision regarding the representation of the Anglo-Indian community in the legislatures. By Article 331, the President is authorised to nominate not more than two members of the Anglo-Indian community to the House of the People, if in his opinion that community is not adequately represented in the House.

According to the first schedule of the Representation of the People Act of 1950, the total elected strength of the House is four hundred and ninety-six.[1] Ten seats are filled by nomination by the President, six to represent Kashmir, two to represent the Anglo-Indian community and two more to represent the Andamans and Nicobars and the tribal areas in Part B States respectively.

The maximum strength of the House should be regarded as more or less reasonable and practicable under prevailing circumstances in India. Two important factors have to be kept in view in determining the total membership of the Parliament. In the first place, it must be large enough to secure the representation of not only the different parts of the country geographically but also its different interests, sectional and otherwise. In the second place, it should be small enough to be an efficient instrument of legislation. Judged by the former test, the size of the House of the People is certainly small, for when each member of Parliament represents nearly seventy-five thousand people, it is impossible for him either to know his voters intimately or to know the peculiar problems of his constituency, its needs and requirements. On account of the vast size of the country

1 Part A States elect 374 members, Part B States elect 96 members. Part C States elect 26 members. Under the proposals made by the Delimitation Commission of 1952, the total elected strength will be increased to 500. Part A States will elect 379 ; Part B, 100 ; and Part C, 21.

Impartial conduct of elections is assured by the appointment of an Election Commission (Art. 324), which is a unique feature of our constitution. This commission looks after the preparation of electoral registers, conduct of elections and appointment of election tribunals.

and the many crores of people living in it, it is not possible to provide for an intimate and personal relationship between the Member of the Parliament on the one hand and his voters on the other. As it is neither too small nor too big in size, it will consist of representatives of all shades of public opinion and will facilitate personal acquaintance, if not intimacy.

The House of the People is elected for a term of five years, subject to earlier dissolution. The President summons, prorogues and dissolves the House. According to the constitution, the expiration of the period of five years shall operate as an automatic dissolution of the House ; but the House can also be dissolved earlier by the President. While a proclamation of emergency is in operation, the life of Parliament can be extended by one year at a time, but no such extension can prolong the life of Parliament for more than six months after the proclamation of emergency has ceased to operate. It must be noted that the constitution does not fix any limit to the maximum period of extension. Its normal term is fixed at five years and this is neither too long nor too short a period to enable members to do their work efficiently. In this connection, it is interesting to note by way of contrast that in the U.S.A. the term of office of the House of Representatives is only two years, which is too short a period to enable members to give their very best to the country, for it is common knowledge that in the second year when real work can be expected of them, their minds will be preoccupied with preparations for the next election ; but it must also be noted that, in the U.S.A. the House of Representatives cannot be dissolved earlier than two years for any reason whatever. Further, in the U.S.A. the biennial election of the House of Representatives indicates the approval or the disapproval of the policy of the government, while the President is half-way in his term of office.

A candidate for election to the House of the People, (*a*) must be a citizen of India, (*b*) must be not less than twenty-five years of age, (*c*) must possess any other qualifications as may be prescribed by Parliament, and (*d*) must be a registered parliamentary voter. It is not necessary that he should be a resident of either the constituency or even the State from which he seeks election. The qualification of birth or domicile is required only for seats reserved for Scheduled Tribes. A candidate for any of the seats reserved for these must not only be a member of the class concerned, but must be a registered parliamentary voter. The general disqualifications of members of all the legislatures in India are practically the same. They are : (1) No person can be, at one and the same time, a member of both Houses of Parliament, or of Parliament and of any State Legislature. If a person is elected to two legislatures, he must resign one of his seats ; (2) if a member absents himself without leave for a consecutive period of sixty days, his seat may be declared vacant by the legislature ; (3) no person who is holding an office of profit under any government in India is eligible for election. But ministers, deputy ministers, parliamentary secretaries and under secretaries,

vice-chancellors of universities, deputy chief whips in Parliament, Officers in the National Cadet Corps and the Territorial Army are all exempted from the operation of this rule ; (4) persons certified by competent courts to be of unsound mind or undischarged insolvents or those who acknowledge allegiance to any foreign state are also disqualified. Parliament is empowered to prescribe any other disqualifications.

By the Representation of the People Act of 1951, a person is disqualified to be chosen as a member of the House of Parliament or of the Legislative Assembly or the Legislative Council of a State (1) if he has been convicted of any offence such as bribery or corruption or illegal practice as defined in the Act or (2) if he has been imprisoned for not less than two years unless a period of five years has elapsed since his release ; or (3) if he has failed to lodge the return of election expenses within the time and in the manner prescribed ; or (4) if he has any share or interest in a contract with the appropriate government ; or (5) if he is a director or managing agent or holds any office of profit under any corporation in which the appropriate government has any share or financial interest ; or (6) if he has been dismissed from government service for corruption or disloyalty to the State unless a period of five years has elapsed since his dismissal. All disputes regarding disqualifications are referred to the President whose decision, which must be based on the opinion of the Election Commission, is final. According to Article 104, any disqualified person who sits and votes as a member of either House of Parliament is liable to a penalty of Rs. 500 for each day of his sitting and voting.

As soon as election is over, the House of the People elects two of its members, one to be the Speaker and other to be the Deputy Speaker. The Speaker is the presiding officer of the House. The Deputy Speaker is to preside over the deliberations of the House in the absence of the Speaker. The Speaker or the Deputy Speaker may be removed from office by a resolution of the House of the People adopted by an absolute majority of the total membership. They should not preside over the sitting of the House while the resolution for their removal from office is under consideration. But they are entitled to be present, speak and defend themselves on the floor of the House without the right to vote. On the model of the Speaker of the British House of Commons, efforts have been taken to make the Speaker of the Indian House of the People a strictly impartial and independent chairman. With this object in view, the Speaker is given only a casting vote to be exercised by him only in the event of a tie. Further his salary and allowances as well as those of the Deputy Speaker are determined by Parliament and are charged on the consolidated fund.

Though he is elected from the party in power when a vacancy exists, he is regarded as above all party considerations. The office of the Speaker is one of great dignity, power and influence. His main function is to preside over the sessions of the House. He is the

custodian of the rights, liberties, privileges and dignity of the House. It is his duty to maintain discipline in the House, ensuring at the same time free speech, free expression of opinion, fair play in debates and giving adequate opportunities for minorities to express their points of view. As the chairman of the House, he is vested with almost dictatorial powers. In consultation with the Leader of the House, he determines the order of business, the time to be allotted to the debates on the address of the President, the days to be devoted for the private members' bills etc. He is the final judge to decide on the admissibility of (*a*) questions, (*b*) resolutions, (*c*) bills, (*d*) adjournment motions, (*e*) points of technical procedure and he must also certify (Art. 110) whether a bill is a money bill or not. He maintains order in the House. He can fix time-limits for speeches. He has the power to select amendments to a bill or resolutions to be discussed by the House. He has also the power to stop any member from speaking. He can ask any member to leave the House by naming him and, in case of refusal, the Sergeant at Arms can be ordered to lift him bodily out of the chamber. If there is persistent disorder, the Speaker has the power to suspend the sitting of the House. He has the power to order unparliamentary words used by any of the members to be expunged from the journal of the House. The chairmen of the various select committees are nominated by the Speaker. He is also the ex-officio chairman of some committees like Committee on Rules and Privileges and the Business Advisory Committee.

In the United Kingdom there is a convention that, at the time of the general election, the Speaker is re-elected from his constituency without opposition and serves through such changes of Ministry as may occur in his term of service. Once chosen from the party in power when a vacancy arises, the Speaker of the British House of Commons serves, after election to the post in a non-partisan capacity, as a strict neutral in politics. He continues as Speaker irrespective of the changes in the political parties that come to power. To give only one example, a new Speaker was chosen by the Conservative Party in 1943 and he was continued in office by the Labour Government of Mr. Attlee which came to power in 1945. But it must be noted that, in India, this principle was not followed during the last general election under the new constitution. The present Speaker, Mr. Mavalankar, who was also the Speaker of the Constituent Assembly when it was functioning as a Legislative body, had to contest his election. It is to be hoped that the same convention which prevails in England regarding the seat of the Speaker at the time of general election will be established as a convention in this country also.

All questions at any sitting of the House of the People are to be decided by a majority vote of the members present excluding the Speaker or any person acting as the Speaker. The Speaker, or, in his absence, any person acting as Speaker, should not vote in the first instance and should exercise his casting vote only in the case of

a tie. According to the prevailing practice, the Speaker exercises his casting vote in favour of the *status quo ante i.e.*, he votes against change and gives another opportunity for discussion of the same matter at a later time. If at any time there is no quorum in the House (one-tenth of the total membership of the House *i.e.*, fifty) it is the duty of the Speaker either to adjourn the House or to suspend the meeting until there is a quorum. The House can transact business notwithstanding any vacancy in its membership.

The President shall from time to time summon each House of Parliament to meet at such time and place as he deems fit. But a period of six months should not intervene between the last sitting in one session and the date appointed for the first sitting in the next session. This provision is very important, since it guarantees at least a minimum of two sessions of Parliament during the year and prevents the possibility of the Parliament not being summoned at all for a longer time by an unscrupulous and aggressive President. The President may, from time to time, prorogue the House or either House or dissolve the House of the People He may address either House or a joint session of both Houses, and for that purpose he may require the attendance of the members. He may send messages to either House on a bill pending before the Parliament. The House to which any such message is sent must consider the matter as quickly as possible. At the commencement of the first session after each general election and at the commencement of the first session of the year, the President has to address both Houses of Parliament and inform Parliament of the causes of its summons. This corresponds to the *Speech from the Throne* in the United Kingdom and the *State of the Union message* in the U.S.A.

The powers and functions of the Parliament can be broadly classified under the following heads :—

(1) **Electoral function or the selection of the Executive.** Article 54 of the Constitution provides for the election of the President of the Republic. The elected members of both Houses of the Union Parliament form a part of the electoral college for the election of the President. Article 66 provides for the election of the Vice-President who is elected by the members of both Houses of Parliament at a joint session.

(2) **The control of the Executive.** According to Article 61, the President can be impeached by Parliament for violation of the constitution. A resolution of both Houses can also remove the Vice-President from his office.

The Council of Ministers is collectively responsible to the House of the People. It is open to the House at any time to compel the resignation of the Council of Ministers, whenever it is not satisfied with the conduct of the Government's policy. Apart from this power the House of the People can control the executive in many other ways. It votes the salaries of ministers and that

gives it an effective control over the ministry. Further, it can, by means of a vote of censure, criticise the Government or some member of it for a specific act. It can refuse to pass the budget or any other important government bill, and that means the government must resign, or it can pass a measure sponsored by the Government with such amendments as are not acceptable to the minister. Further, it can ask questions regarding the policy of the Government and that will give the House an opportunity of not only calling the attention of the ministry to its sins of omission and commission, but also exposing the follies of the ministry and, finally, it can pass a vote of want of confidence expressing disapproval of the general policy of the Government as a whole. In all these cases, the Cabinet must resign or appeal to the country. Collective responsibility of the ministry means, among other things—(1) that the ministry must give unanimous advice to the President, and (2) that one or all the ministers can at any rime be turned out of office by a displeased or censorious House. In England, no convention of the constitution is more firmly established and more readily respected than the one by which a defeated ministry resigns its Office. If an individual minister is not acceptable to the House on account of the policy of his department, one of two things must invariably happen : either he is persuaded by the Prime Minister and his ministerial colleagues to change his policy or course of action, or he has to resign before Parliament formally passes a vote of censure on him or the ministry as a whole rallies to his support and stands or falls with him.

(3) **Legislation.** All laws require the consent of both Houses of Parliament. The Parliament has power to make laws on any subject enumerated in (*a*) the Union List consisting of ninety-seven items, (*b*) the Concurrent List consisting of fourty-seven items. The residuary powers are also vested in the Union Parliament. The State Legislatures also can pass laws on subjects contained in the concurrent list. But, whenever there is a conflict between a State law and the Union law on a concurrent subject, the constitution provides that, except in a few cases, the Union law prevails over the State law and the latter, to the extent of its inconsistency with the Union law, will become null and void. The laws passed by the State Legislatures on a concurrent subject prevail over the Union laws only when those laws are reserved for the consideration of the President and have received his assent ; even here, those laws are valid only within the boundaries of the State concerned. Generally speaking, the Parliament has no power to make laws on subjects enumerated in the State list which is the exclusive domain of the States. But, the constitution makes provision for the power of Parliament to make laws even in respect of items contained in the State list on certain occasions and under certain circumstances *viz* ; (1) if the Council of States declares by a two-thirds majority that such a thing is necessary or expedient in the national interest ; (2) if the State Legislature makes a request to that effect by passing a resolu-

tion and (3) if and when the Parliament issues a Proclamation of Emergency.

Even the ordinances issued by the executive during the recess of Parliament, are subject to review and control by Parliament. When the Parliament reassembles, such ordinances have to be placed before it and they cease to have any effect six weeks after the re-assembling of Parliament or earlier, if the Houses of Parliament had expressed their disapproval of the same by means of resolutions. Likewise delegated legislation also is subject to review and control by Parliament. It must be noted that the Parliament's legislative power, though very vast and extensive, is subject to certain limitations like (1) a written constitution with a clear-cut division of powers between the Union on the one hand and the States on the other ; (2) the fundamental rights guaranteed in the constitution ; and (3) by the existence of the Federal Courts which can pronounce the laws of the Union Parliament as unconstitutional. Besides, laws passed by the Parliament are not valid unless they receive the assent of the President who, however, has the power either to withhold his assent or return them to Parliament within six weeks, except in the case of money bills, for reconsideration with his own recommendations. But if after reconsideration, the bill is again passed by both Houses of Parliament and presented to the President, he cannot withhold his assent any longer (Art. 111). In England, the Parliament's legislative power is practically absolute and unlimited subject only to the veto of the Crown and the delaying power of the House of Lords which are mere formalities. In England, there is no judicial veto on laws passed by the Parliament. In this respect, the Indian Parliament certainly possesses much less power than the British Parliament, which is really sovereign in the fullest sense of the term.

Though not as much sovereign as the British Parliament, the powers of the Indian Parliament are greater and more extensive than those possessed by any other federal legislature in the world. Neither the American Congress or the Australian Parliament can ever pass any law on subjects reserved exclusively for the States.

(4) **Financial control.** The Parliament has an effective control over the national purse. No taxes can be levied or collected and no expenditure may be incurred without the sanction and authority of Parliament. But it must be remembered that the expenditures charged on the consolidated fund of India are not votable by Parliament, though both Houses can discuss the estimates of that expenditure. All other estimates relating to expenditure must be submitted to the House of the People in the form of demands for grants. It is open to the House either to sanction the demands or to refuse to sanction them or to reduce the amount. Further, the initiative in financial matters lies with the government, for no demand for a grant can be made except on the recommendation of the President and no bill involving expenditure from the consolidated fund of India can be considered by the Parliament unless recommended by the President. Even

bills introduced by private members which involve expenditure can be considered by the Parliament only after they had received the approval of the President. Thus, all demands for grants, appropriations and even proposals for new taxations must invariably receive the sanction of the House of the People.

(5) **Discussion of Public Questions and redressal of grievances.** The power of the Parliament to discuss and debate public questions is practically unlimited. It can do so on the occasion of the inaugural and annual address by the President. It can also review and criticise the work of the different departments of state during the discussion on the estimates of expenditure, the appropriation and revenue bills. Subject to the limitations imposed by the constitution and by its own rules of procedure, the members of Parliament exercise and enjoy their right to freedom of speech which is absolutely essential to criticise the policy of Government (Art. 105).

(6) **Miscellaneous Powers.** Parliament has the power to move for the removal of judges of the Supreme Court and of the High Courts on the ground of proved misbehaviour and incapacity by an address supported by a two-thirds majority in each House. The initiative in amending the constitution rests solely with the Parliament. Some provisions of the constitution can be amended by a simple majority while some other provisions can be amended by a two-thirds majority, while the more important provisions of the constitution require not only a two-thirds majority in each House of Parliament, but also ratification by one-half of the State Legislatures. Parliament must also serve as the custodian and guardian angel of peace and order throughout the country by preventing any grave threat to the tranquillity and security of India and by ensuring the constitutional government in the States and their financial stability. It must also devise the system of effectively controlling the official bureaucracy by jealously maintaining its purity and the high standard of its ability and by making it more responsible to the people at large. There is also a moral responsibility on the part of the Parliament to establish a welfare state in India as envisaged both in the Preamble as well as in the chapters on Fundamental Rights and the Directive Principles of State Policy.

We turn now to the judiciary.

The Charter Act of 1726 granted the Company the right to set up courts. In the three presidency towns, courts of justice on the English model developed. There grew up here also, in course of time, the class of lawyers, hitherto unknown in India. Warren Hastings further improved judicial administration. In the district (*zillah*), the mofussil Diwani Adalat was formed by the collector with a Muslim or a Hindu lawyer to advise him. This decided civil cases. The mofussil Faujdari Adalat was also attended by the Collector; but, the Qazi decided criminal cases in this. Appeals from these courts went to the Sadr Diwani Adalat and Sadr Nizamat Adalat at Calcutta. In the former, the governor-general and two councillors

sat with Indian officers to advise them. In the latter, one Indian judge was included with them. The concentration of revenue and judicial administration in Calcutta prepared it to become the capital. To help matters of justice, Hastings induced the translation of the Code of Manu. Sir William Jones published his translation in 1794. The need for understanding Hindu law led to the study of Sanskrit. A digest of Hindu law was prepared by pandits and translated into English by Halhead. It has, however, been remarked that digests like the one prepared later by Colebrooke gave the old Sanskrit codes greater authority than was actual and disregarded customary and local variations and the effect of changing economic and social conditions. Commentaries on the codes had hitherto expanded the law by including new usages by interpretation to suit the age or the area. Customs, which were changeable before, now became rigid.

Cornwallis carried out important administrative reforms in a series of regulations of 1793 which were collectively called the Cornwallis Code. In their judicial aspect, these regulations deprived the collectors of judicial power. Separate *Zillah* judges were appointed and given magisterial powers also. Four provincial courts of appeal were set up at Dacca, Murshidabad, Calcutta and Patna. These courts also sent out judges on circuit. Appeals from these went to the governor-general-in-council who formed the Sadr Diwani Adalat and the Sadr Nizamat Adalat. Dodwell remarks that, though Cornwallis followed a great ideal inspired by philanthropy and love of justice, in its benevolent intentions and unfortunate results, his code bears a marked resemblance to the Regulating Act, because both were framed in ignorance of the conditions of the country. This is seen in his revenue settlement. In the same way, he made laws in English which few Indians could read. The complex English procedure was imitated and proceedings were costly. Further, Cornwallis excluded Indians from high offices, a policy which Marshman strongly criticises. His reforms in the civil service remained permanent ; but the others became changed. In 1814, Collectors were given back jurisdiction in criminal justice and control of police on the ground that their revenue functions gave them intimate knowledge of the life of the people and on the ground that Indians were used to a paternal representative of the Raj. In the time of Wellesley, the governor-general and his Council gave up their membership of the Sadr Courts to which judicial officers like Colebrooke were appointed. Besides the courts of the Company, there was the Supreme Court set up by the Regulating Act and appointed by the Crown. An Act of 1800 set up a Supreme Court at Madras.

Muslim Law was applied in criminal cases till the criminal law was codified by the British. It sanctioned barbarous punishments like mutilation. The Indian Penal Code was based on English criminal law adapted to Indian conditions. The civil law in the main consists even now of customs and usages of communities supplemented by English law in cases of gaps or when necessitated by new circumstances. The laws were amended by laws of Parliament or by

laws of the legislatures in India, and expanded by judicial decisions. An attempt to codify the Hindu law was made by a committee which reported in 1947. Action has been taken on it piecemeal so far.

After the Crown took over the administration, High Courts were set up in which the old Sadr and Supreme Courts were amalgamated. Two judges were appointed by the Crown ; but a third had to be drawn from the I.C.S. The Courts had no original jurisdiction in matters of revenue Where there were no high courts, there were set up Chief Courts or Judicial Commissioners. Below the high court were the district judges and additional judges who dealt with both civil and criminal justice. Each province was divided for criminal justice into sessions divisions under one or more judges. Below them, criminal cases were dealt with by magistrates who were in three classes. Trial by jury was introduced ; but the high court may change or annul the decision of the jury. A Criminal Tribes Act put under surveillance certain communities which were regarded as prone to crime. This law was repealed only in 1952 in accordance with the report of a committee, and the States were allowed to pass laws for the control of habitual offenders, regardless of birth, caste or creed. Separation of the administration of criminal justice from the executive had been a moot point of agitation during British rule. After Independence, Madras has pointed out the way here by setting up a separate heirarchy of judges for criminal justice recruited from lawyers. Revenue officers like the collector would retain their power to preserve peace and prevent crime.[1] In civil cases, the lowest civil courts are headed by the Munsiffs. Appeals could be taken from the high courts to the Judicial Committee of the Privy Council till all such appeals were abolished in 1949. In Calcutta, Madras and Bombay the semi-judicial sheriffs set up by the British still continue.

The rule of law introduced by Britain into India was, however, limited by special powers kept by the executive. Thus, political suspects like Lala Lajpat Rai were deported under regulations issued by the Company. Section 124A of the Indian Penal Code was used to punish disaffection against the government. Section 144 of the Criminal Procedure Code was used to suppress political agitation. To put down the terrorist movement in Bengal, a large number of suspects were detained in prison or under observation without trial as *detenus*. Europeans were liable to trial by ordinary courts in civil cases from 1836. But, till 1872, they were tried in criminal cases only by courts established by the Crown. In that year, Sir James Fitziames Stephen subjected them to trial by ordinary courts. But they had a right to be tried by a jury which should include Europeans. In Lord Ripon's time, the Ilbert Bill tried to take away

[1] This combination of functions was the result of historical causes. It never existed in the presidency towns. The police force, once exclusively under the Collector, has gradually come under a separate department. Control over magistrates who tried criminal cases by officers responsible for keeping the peace was still considered wrong, as the Collector was still having some connection with the police.

this privilege, but failed. After the Reforms of 1919, as the result of the recommendation of the Racial Discriminations Committee, the right to claim a mixed jury was extended to Indians also. After Independence, law has been passed to remove all discriminations in favour of Europeans. Another hindrance to the rule of law came from laws controlling the press.

A press developed only under the British rule.[1] Between 1780 and 1818, there was severe control. But the position differed from province to province. Thus, there were no restrictions in Madras unlike in Bengal. A Britisher, Hicky, started the first newspaper—the *Bengal Gazette* or *Hicky's Gazette* in 1780. But these early British journalists were strong critics of the government unlike the later ones. Warren Hastings suppressed this paper in 1782. Cornwallis deported a journalist, Duane, for military reasons, as a war with France was going on then. Wellesley's regulations imposed strict censorship. Lord Hastings, who was liberal, abolished it, but limited the topics allowed for discussion. He retained the power to deport. From 1823 to 1828, we have again a period of control. John Adam, who was opposed to a free press, deported Buckingham, editor of the *Calcutta Journal* who had trenchantly criticised the government. In the same year (1823), new rules forced every printer of a newspaper to have a license. Amherst, slightly more liberal, continued these restrictions. But Lord Bentinck who followed in 1828 followed a liberal policy in practice, though legal restrictions continued. Metcalfe repealed these restrictions. Though Canning imposed some restrictions during the Mutiny, these remained only for a year, and the press was legally free. Papers like the *Times of India* arose. Papers in Indian languages also began. The press increased in power. Reuter's news service set up in 1858 was extended to India in 1860, and the telegraph bound the whole world. The *Amrita Bazar Patrika*, which was started as a language paper, became an English paper in 1878. *The Hindu* began as a weekly in 1878. Violent articles formed a pretext for Lord Lytton to take action against the press.

Lytton passed the Vernacular Press Act of 1878 empowering magistrates to demand securities from vernacular newspapers. It was repealed by Lord Ripon in 1882 before its enforcement. Pro-Imperialist books like the *Cambridge Short History of India* considered that restoration of a free press by Ripon was a mistake, because the Government of India was not constituted to resist press attacks and depended only on "popular respect traditionally paid to all governments in India." Till 1910, the press was comparatively free and newspapers and journals multiplied. Growth of nationalist agitation led Lord Minto to pass the Press Act of 1910 by which securities could be demanded from offending newspapers and repeated offences

[1] Smith, *Oxford History of India* Article by Chaturvedi in the *Journal of Indian History*, Dec, 1938. Article in the *K. V. Rangaswami Aiyengar sixtieth birthday commemoration volume*—The Beginning of the Press in India. Wordsworth has a historical survey of the press in an essay (No. 5) in *Modern India and the West* (ed. by O'Malley).

could lead to the forfeiture of the press. After the Reforms Act of 1919 the legislature repealed this law in 1919. But the non-co-operation movement started by the Congress led Lord Reading to legislate to control printed matter. He also certified the Princes Protection Act to prevent attacks on Indian princes by newspapers—a law which the legislature refused to accept. After Independence, freedom of the press has been guaranteed, along with other fundamental rights, by the new constitution. The government has, however, taken power under the Press (Objectionable Matter) Act of 1951 to penalise propagation of violence and certain very grave offences.

We now pass on to the Union Judiciary. As in other federations the Indian Constitution also has set up a Supreme Court consisting of a Chief Justice and not more than seven other judges. But the parliament has been empowered to increase the number of judges. The present strength of the Supreme Court is eight including the Chief Justice. It is significant that the Constitution does not prescribe the minimum number of judges. As in the U.S.A., the Indian Supreme Court is a direct creation of the constitution. Another remarkable feature of the Indian Constitution is that, though it is federal in form and structure, it has set up a single integrated judiciary for the whole Union. In this respect, India differs from U S.A. where the federal and state judiciary are separate and independent of each other, there being separate federal courts to administer and enforce the federal laws throughout the country. It has been remarked that the separateness of the federal law and judiciary from state law and judiciary is so remarkable in the U.S.A. that legally it is possible to have a person tried for the same offence once in the state court and for a second time in a federal court, provided the offence were punishable under both sets of laws. Again, in the U.S.A., the federal judiciary has got its own independent and powerful organisation to enforce its judgments. Each federal court has attached to it an officer, known as the United States Marshall, whose chief duty is to carry out the writs, orders and judgments of the federal court. There is also in every judicial district an officer called the United States District Attorney whose chief duty is to see that no persons transgress the federal laws or evade federal taxation. Both sets of officials are under the direction of the Attorney-General. Thus, these officers constitute a network of federal authorities covering the territory of the whole union. On the other hand in India, the Supreme Court and the State High Courts are units in the same structure and provide remedies in all cases arising under both federal and state laws. At present there are no separate and independent union courts to administer and enforce union laws in the state. But the constitution empowers the Parliament to create additional courts for the administration of union laws. When Parliament takes this step, perhaps, a double organization of courts may come into existence. But it will only be a question of organizational convenience and will not amount to a departure from the basic principle of an integrated judiciary competent to try cases arising under all laws, civil, criminal and constitutional.

The judges of the Supreme Court are to be appointed by the President, after consultation with such of the judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose. The Chief Justice of India must always be consulted regarding the appointment of the other judges of the Supreme Court. It is significant that the constitution does not state clearly that such advice is binding on the President. As the power to appoint the judges is not entrusted to the real executive, there is no danger of appointment of judges being made purely on political basis. In other words, the judges of the Supreme Court are placed in an unassailable position beyond the changes and chances of electoral contests. Further, it must be noted that the power to appoint judges is vested solely in the President. This is not the case in the U.S.A., where all federal appointments including those of the judges are made by the President, subject to ratification by the Senate. In India, this unshared and undivided power to appoint the judges of the Supreme Court might be exploited by a highly ambitious and unscrupulous President. To this extent, the constitution of the Judiciary is defective.

The judges of the Supreme Court hold office until the age of sixty-five. A judge may however resign his office earlier by writing to that effect to the President. He may also be removed from his office by an order of the President on the ground of proved misbehaviour or incapacity, only after an address, by each House of Parliament supported by (1) a majority of the total membership of each House and (2) a majority of not less than two-thirds of the members present and voting, has been presented to the President, in the same session for such removal. But Parliament has been empowered to regulate the proceedings governing the removal of a judge for proved misbehaviour or incapacity. Thus, it is clear that the judges have been guaranteed perfect security of tenure which is absolutely essential to enable them to administer justice impartially without fear or favour, affection or ill-will.

A person to be appointed a judge of the Supreme Court must possess the following qualifications. (1) He must be a citizen of India ; (2) he must have been for at least five years a judge of a High Court or of two or more such courts in succession or he must have been for at least ten years a practising advocate of a High Court or of two or more such courts in succession ; or (3) he must be, in the opinion of the President, a distinguished jurist. This provision will enable the President to appoint as judges of the Supreme Court even non-practising lawyers who are experts in constitutional law and who are working as Professors of law in any of the Law Colleges in India.

After retirement, the judges of the Supreme Court should not practise or act in any court of law or before any authority within the territory of India.

Every judge, before he enters upon his office, must take an oath or make an affirmation prescribed in the Third Schedule of the Consti-

tution which runs thus : "I will bear true faith and allegiance to the Constitution of India as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judgment, perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws."

The constitution has prescribed in the Second Schedule the salaries to be paid to the judges of the Supreme Court, according to which the salary of the Chief Justice is Rs. 5000 p.m. and that of any other judge is Rs. 4000 p.m. In addition to the monthly salary, the judges are entitled to certain rights and privileges, chief among them being (1) use of a rent-free official residence ; (2) reasonable travelling allowances when on duty within the territory of India as the President may, from time to time, prescribe ; (3) same rights in respect of leave (including leave allowances) and pension which were formerly enjoyed by the judges of the Federal Court under the Government of India Act of 1935 ; (4) the salaries, allowances, rights and privileges regarding leave, pension etc., should not be altered to the disadvantage of a judge during the period of his office, except in cases of proclaimed financial emergency which empowers the President to order a general reduction in the salaries of all government employees including those of the judges. The salaries, allowances and pensions of the judges and of other administrative officers and servants of the Supreme Court are charged on the Consolidated Fund of India and are not votable by the Parliament, which has, however, the power to discuss the question of the salaries.

Article 126 provides for the appointment of an Acting Chief Justice. In the event of the inability of the Chief Justice, due to absence or illness or any other cause to perform his duties, the President may appoint any other judge of the Supreme Court to be the Acting Chief Justice.

Article 127 provides for the appointment of *Ad Hoc* Judges. When there is no quorum available either to hold or to continue any session of the court, the Chief Justice of India may request a judge of any High Court to attend the sittings of the Supreme Court as an *ad hoc* judge after, (*i*) obtaining the consent of the President, and (*ii*) consulting the Chief Justice of the High Court concerned. Similarly, with the previous sanction of the President and with the consent of the individual judge concerned, the Chief Justice of India can ask a retired judge of the Supreme Court (or the Federal Court) to serve as a judge of the Supreme Court for short periods (Art. 128). These Articles have obviously been introduced to provide elasticity and to afford the much-desired relief to the Supreme Court during times of heavy pressure of work.

The Supreme Court is the highest court of appeal in India, and it normally sits at Delhi ; but it may also sit in such other place or places as may be fixed by the Chief Justice of India with the consent of the President.

Article 129 declares that the Supreme Court shall be a court of Record and shall have all the powers of such a court including the power to punish for contempt of itself. In other words, it is to be a Superior Court where judgments and judicial proceedings must be recorded and preserved for perpetual memory and testimony. Its records have great evidentiary value and should not be questioned by any court within the territory of India.

According to the late Sir Alladi Krishnaswami Iyer, "The Supreme Court in the Indian Union has more powers than any Supreme Court in any part of the world." The powers of the Indian Supreme Court may be conveniently described under the following heads : (1) Exclusive original jurisdiction. (2) Appellate jurisdiction. (3) Consultative or advisory jurisdiction. (4) Additional jurisdiction as and when conferred upon it by Parliament with respect to any of the matters in the Union List.

Article 131 deals with the exclusive original jurisdiction of the Supreme Court. It has exclusive original jurisdiction in any dispute (1) between the Government of India and one or more States ; (2) between the Government of India and one or more States on the one hand and one or more other States on the other ; (3) between two or more States, if the dispute involves any question whether of law or fact on which the existence or extent of a legal right depends. Thus, the parties to the disputes must be governments, either the Union or the States or the federating units themselves. The proviso to Article 131 excludes from the jurisdiction of the Supreme Court, disputes arising out of any treaty, agreement, engagement or Sanad entered into or executed, before the commencement of the Constitution, by Part B States with the Government of India.

It must also be noted that the Supreme Court has a wide original jurisdiction under Article 32 of the Constitution to issue directions or orders of the nature of the writs of *Habeas Corpus, Mandamus, Prohibition* and *Quo Warranto* and *Certiorari* or any of them for the enforcement of the fundamental rights of individual citizens. However, this jurisdiction is not exclusive but concurrent, since the High Courts in the States have also been given similar powers to issue such directions or orders of the nature of the writs.

The appellate jurisdiction of the Supreme Court can be conveniently studied under three heads : (*a*) constitutional cases, (*b*) civil cases, (*c*) criminal cases. In constitutional matters, an appeal lies to the Supreme Court from any judgment, decree or order of a High Court in all civil, criminal and other proceedings, if the High Court certifies that the case involves a substantial question of law regarding the interpretation of the constitution. If, however, such a certificate is refused by the High Court the Supreme Court may grant special leave to appeal. When the appeal is admitted, other grounds may also be brought up against the judgment appealed against, with the sanction of the Supreme Court. Article 132 (2) is an improvement on the corresponding provision for appeal to the Federal Court in the

Government of India Act of 1935. (Sec. 205) which insisted on a certificate from the High Court as a pre-requisite for preferring an appeal. The Act of 1935 did not contain any provision for special leave to appeal in suitable cases where the High Court had refused to issue the certificate.

Article 133 deals with appeals in civil cases. An appeal shall lie to the Supreme Court from the High Court when the latter certifies (*a*) that the amount involved in the suit is not less than Rs. 20,000 or such other sum as Parliament may by law specify [(Art. 133) (1) (*a*)]; (*b*) that the judgment, decree or final order involves directly or indirectly some claim regarding property of about the same value ; (*c*) that the case is one (*i*) fit for appeal to the Supreme Court, or (*ii*) involving a substantial question of law.

There is no provision for appeal to the Supreme Court from the judgment of a single judge of a High Court, unless Parliament provides otherwise by law.

Article 134 provides for appeals to the Supreme Court in all criminal cases in which the High Court (*a*) has, on appeal, reversed an order of acquittal of an accused person and sentenced him to death ; or (*b*) has taken up for trial before itself any case pending before a Subordinate Court and has convicted and has sentenced the accused person to death ; or (*c*) certifies that the case is a fit one for appeal to the Supreme Court. Parliament may, by law, confer on the Supreme Court additional powers to hear appeals from any judgment in a criminal case of a High Court, subject to such conditions and limitations specified by law.

Until Parliament provides otherwise by law the Supreme Court can hear appeals in any other matter in which the Federal Court enjoyed jurisdiction before the commencement of this Constitution.

Article 136 gives the Supreme Court very wide powers to grant, at its discretion, special leave to appeal from any judgment, decree or order of any court or tribunal in India, excepting the tribunals constituted by or under any law relating to the Armed Forces. The use of the terms *Court* or *Tribunal* is significant and implies that the Supreme Court may and can interfere by way of appeal in all such matters where grave injustice has been done, or where the principles of natural justice have been violated. Thus, Article 136 confers on the Supreme Court practically the same powers as those possessed by the Judicial Committee of the Privy Council.

Like the Supreme Court of the U.S.A. its Indian counterpart is not bound by its own decisions : it has been empowered to review its own judgment or order.

In addition to the jurisdiction conferred upon the Supreme Court by the constitution itself, Parliament may by law enlarge its jurisdiction to cover any of the matters enumerated in the Union List. Parliament may by law confer upon the Supreme Court

such supplementary powers as are found to be absolutely necessary or desirable for the purpose of enabling the court to exercise more effectively the jurisdiction conferred upon it by the constitution.

The law declared by the Supreme Court is binding on all the courts throughout the territory of India. Further all authorities in India are required to act in aid of the Supreme Court.

Article 143 empowers the President to seek the opinion of the Supreme Court on important questions of law and fact. The Article runs thus : (1) "If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and that Court may, after such hearing as it thinks fit, report to the President its opinion thereon. (2) The President may, notwithstanding anything in clause (1) of the proviso to Article 131, refer a dispute of the kind mentioned in the said clause to the Supreme Court for opinion and the Supreme Court shall after such hearing as it thinks fit, report to the President its opinion thereon." It is noteworthy that the constitution does not state anywhere specifically whether the opinion of the Supreme Court is binding on the President or not. In the absence of any such provision, Article 143 is faulty. It detracts from the special importance, dignity and prestige of the Supreme Court as the final court of appeal in all disputes not excluding those between the state on the one side and the citizens on the other side. This is bound to embarrass the Supreme Court when the same question or a similar one on which it had already given its opinion actually comes up before the Court for adjudication either between the government and the citizen or between two private individuals. A strong and independent judiciary is the most effective guarantee for the preservation of the rights and liberties of individual citizens and for the maintenance of the rules of the Constitution. In order that the judiciary might perform its functions effectively, it is absolutely necessary that it should be not only separate from but also totally independent of the Legislature as well as the executive. But, this advisory jurisdiction conferred on the Supreme Court is bound to impair its independence. In the first place, it is against the accepted principle of the separation of powers and its accompanying system of checks and balances, which is vitally necessary for the independence of the judiciary. Secondly, the function of the Supreme Court is to be the Supreme Judge of the land, and certainly not the political or legal adviser of any Government. Thirdly, as the opinion it gives is not binding on the President, and as the Supreme Court itself will not be prevented from giving a contrary judgment if it feels inclined to do so when the case is actually brought before it, it is inadvisable to entrust this function to the Supreme Court. Finally, whether the court holds itself bound by the tenor of the advice it has given to the President or not, its impartiality would be seriously doubted.

For the impartiality of the judiciary lies not only in its judicial pronouncements, but also in the reputation for impartiality which it enjoys in the country. It will not enjoy or command that reputation and esteem, if it is known that it is the legal adviser of the government in all those cases where that government is a party. It is worthwhile recalling the fact that it was precisely on the same ground that Chief Justice Coke refused James I's request for the advice of the Court in a case that might come before it in its judicial capacity.

Those who defend article 143 of the Constitution maintain that there is nothing positively wrong in the President seeking the advice of the Supreme Court. They also mention positive advantages that might result by such provision. According to them, it happens sometimes that a law which has been in force for many years is declared null and void by a court with the result that the rights of thousands of people are adversely affected. If, on the other hand, the Supreme Court is consulted beforehand at the time of the enactment of laws, a lot of needless and ruinous litigation might be easily averted. Commenting on Article 143, Prof. Palande observes, "A favourable opinion given by the judges will fortify their position ; an unfavourable opinion on the other hand will avoid unnecessary litigation in future." It may be stated that such a provision existed in Section 213 (1) of the Government of India Act of 1935, which empowered the Governor-General to consult the Federal Court on important questions of law. But, whereas the Governor-General could consult the Federal Court only on questions of law, the President of the Republic is empowered to seek the opinion of the Supreme Court on questions of both law and fact. Again, under the Act of 1935, the Federal Court was not bound to give its opinion, though in actual practice it did not refuse to give such opinion when required by the Governor-General. But under the new Constitution, the Supreme Court is bound to report its opinion at least in all those cases arising under clause (1) of the proviso to Article 131. A similar provision is found in the Judicial Committee Act of 1834 of Britain, also in section 60 of the Canadian Constitution. Though the Judicial Committee of the Canadian Supreme Court has declared that it is "inexpedient and inconvenient" to express "speculative opinion on hypothetical cases", it has often been consulted by the Executive.

It must be remembered that the American Constitution does not contain any provision for advisory opinion from the Supreme Court. It is well known that the American Supreme Court has boldly and consistently refrained from pronouncing its opinions except in cases actually brought before it in the manner provided for in the Constitution. Therefore, such a provision in our constitution enabling the President to consult the Supreme Court is altogether unnecessary, in view of the existence of an Attorney-General, the legal officer of the Government, competent to advise the government on all legal matters, he himself being as much qualified as any judge of the

Supreme Court. The difference in the phraseology "the Court may .....report" in clause (1), and 'the Court shall.....report' in clause (2), is significant. In cases covered by clause (1), there is no binding obligation on the Supreme Court. But in cases covered by clause (2), namely cases arising under clause (1) of the proviso to Article 131, the Supreme Court is bound to report its opinion to the President. As pointed out by N. R. Raghavachari, "In either case, however, the President is not bound to accept the opinion. Nor can such opinion have any force or value except as one given by persons who must be presumed to know the law on account of the position they occupy." In the case of Attorney-General of Ontario *vs.* Attorney-General for Canada the Privy Council held that an Act of the Dominion Parliament which require the Judges of the Supreme Court to answer questions put to them by the executive was *ultra vires*. In the case of Attorney-General of British Columbia *vs.* Attorney-General of Canada, Lord Haldane observed, "Under this procedure, questions may be put which it is impossible to answer satisfactorily ; not only may the question of future litigants be prejudiced by the court laying down principles in an abstract form without any reference or relation to actual facts, but it may turn out to be practically impossible to define a principle adequately and safely without previous ascertainment of the exact facts to which it is applied." The expression "the court may... report" in clause (1) implies that the Supreme Court is not bound to give the President an opinion on any abstract and hypothetical point or on any matter which has not come up before it in the form of cases for purposes of adjudication. But, in view of the fact that the judges of the Supreme Court are all appointed by the President only, it is too much to expect that they will act in a most legalistic manner and refuse to answer any reference made to them by the President on a matter of public importance.

The Supreme Court is empowered to enquire into any dispute or doubt regarding the election of the President and Vice-President, and its decision on the matter is final. But, when an election of a person to these offices is declared null and void, any act done by them in the exercise or performances of duties and functions before the judgment of the Supreme Court should not be declared unconstitutional by reason of their invalidating their election.

The Chief Justice of India, or, in his absence, the seniormost judge of the Supreme Court, administers the oath of office to the President and every person acting as the President before he enters upon his office.

Article 317 (1) provides for one of the methods of removing the chairman or any other member of a Public Service Commission. It states clearly that when the ground for the removal is "misbehaviour", such an officer shall be removed by the President only after making a reference to the Supreme Court and receiving a report thereon after an enquiry.

The Supreme Court has also the power to make rules of proce-

dure with the sanction of the President, for regulating (*i*) the profession and practice of the Bar, (*ii*) the hearing of appeals, (*iii*) the enforcement of rights, (*iv*) the entertainment of criminal appeals by certificates granted by the High Courts, (*v*) the reviewing of its own judgments, (*vi*) costs, (*vii*) bail, and (*viii*) stay of proceedings and such other matters. But, it must be noted that the rules of the court do not limit its inherent power to make orders necessary for securing the ends of justice, or to prevent the abuse of the processes of the court.

Whenever the Supreme Court hears cases involving interpretation of the Constitution and in considering references made to it by the President under Article 143, the quorum of judges shall be a bench of at least five.

Judgments as well as opinions of the court must be delivered in open court. Though decisions are arrived at by majority, any dissenting judgment or opinion may be delivered by any judge who does not concur with the view of the majority.

The officers and servants of the Supreme Court are appointed by the Chief Justice or by such other judge or officer of the court nominated by the Chief Justice. But it is open to the President to ask the Supreme Court to consult the Union Public Service Commission in the matter of appointments on its staff. Further, the rules of the court regarding the salaries, allowances, pensions, leave etc., of its subordinate officials also require the approval of the President.

It is the duty of the Supreme Court to act as the guardian and custodian of the Constitution. By its power to interpret the Constitution, it is its duty to keep in check the two sets of governments, federal and state, from encroaching on the sphere allotted to the other government. A brief analysis of the provisions regarding the jurisdiction, powers and functions of the Supreme Court would clearly reveal the fact of its being overburdened with jurisdiction and functions. So much so, that it can be truly said that there is no other Federal Court in any federal state with such a variety of jurisdictional powers and functions. The Indian Supreme Court has larger powers, more numerous functions and more extensive jurisdiction in a variety of cases than the American Supreme Court, the Canadian Supreme Court and the Australian High Court.

As in America, the Indian Supreme Court has been made the highest court in the land. It is the final interpreter of the Constitution. It has, like the American judiciary, the power of life and death on every act of the executive or the legislature by declaring it *ultra vires* of the Constitution. The Supreme Court and the High Courts in the States have also been given the power to issue various kinds of writs, on individuals, association, even on governments for the enforcement of fundamental rights of citizens. Thus, in many respects the Indian judiciary is made supreme. But this is not the case in the United Kingdom where the Parliament is the sovereign

with no equal either to rival or superior to exceed its powers. Its laws cannot even be vetoed by the judiciary on the ground of unconstitutionality.

The position of the Indian judiciary is thus made practically supreme in many respects. Thus, to a large extent, we have incorporated the doctrine of the judicial supremacy as it prevails in the U S.A.

In order to effectively perform the functions entrusted to the Indian Supreme Court, the judges of the Supreme Court and of the High Courts must be assured complete independence. The framers of our constitution have adopted certain provisions to ensure to the Supreme Court a reasonable degree of independence from the executive. According to the constitution, the judges of the Supreme Court and of the High Courts cannot be removed from office except by an order of the President passed after an address from both Houses of the Union Parliament has been presented to him for such removal on the ground of proved misbehaviour or incapacity Further, the constitution provides that the salaries and allowances of the judges are to be charged on the Consolidated Fund of India *i e.*, not votable by Parliament. Again, their privileges, allowances, rights in respect of leave of absence or pension should not be varied to their disadvantage after their appointment. These provisions ensure for the judges a reasonable degree of independence.

Except for the provision empowering the President to reduce the salaries and allowances of all government servants including the judges of Supreme Court and of the High Court during times of proclaimed emergei cy, all other provisions are fair enough to make the judiciary reasonably independent. In the U.S A., the constitution, which is based on the principle of the separation of powers and functions together with its accompanying system of checks and balances, provides for the complete independence of the judiciary. Article 3 of the U S.A. Constitution states : "The Judges, both of the Supreme and inferior courts shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office." They can be removed from office only by impeachment. In the United Kingdom also, the judges of the superior courts cannot be removed from office except on an address presented to the King from both Houses of Parliament. Their salaries also are not submitted to the vote of the House of Commons, but are charged permanently on the Consolidated Fund.

Our constitution authorises the Parliament to increase the number of judges of the Supreme Court. This provision may result in creating unintended and unpleasant consequences. This is a loop-hole in the constitution, or to use the phrase of Lord Bryce, "a joint in the Court's armour"—a joint through which some weapon might one day penetrate; for situations may not altogether be wanting

in which a government finding that its actions are not upheld by the court, might be tempted first to pass a law enlarging the Bench and then "pack" the court with its own partymen in order to secure a favourable majority of judges on the Supreme Court. If so, the judiciary cannot be as independent and impartial as to act as an effective guardian of the constitution against possible assaults on it by the executive and the legislature. It is to be hoped that in our country also public opinion would become well-informed, alert and enlightened enough to establish a convention strong enough to prevent even the most powerful and unscrupulously ambitious executive from making the Supreme Court a plaything of party politics.

Though the Indian Federal Judiciary is, to a large extent, modelled on that of the U.S.A., they differ in powers, functions, jurisdiction, organization as well as in the mode of appointment, tenure of office, and the number of the judges.

But, in some very important matters, the position of the Indian judiciary is certainly inferior to that of the American judiciary. Many important matters have been placed beyond the jurisdiction of the court by the constitution itself. In those matters, the judiciary will have no power to challenge. Among them the following are the most important : (1) No law laying down procedure for the arrest and detention of individuals can be challenged by the courts. But, if any particular provision of these laws is repugnant to any provision of the Constitution itself, it can be declared *ultra vires* by the courts. (2) No law laying down any principle of compensation for the acquisition of property by the state can be challenged by the courts on the ground that the compensation is unjust or unreasonable or insufficient. The principle of compensation for such acquisition of property as laid down by the legislature is deemed to be final. (3) Some very important electoral matters also have been placed beyond the jurisdiction of the judiciary. For instance, no court can challenge any law relating to the delimitation of the constituencies or allotment of seats to such constituencies. Further, the legislatures, federal and state, have also been empowered to bar the jurisdiction of the courts in matters relating to petitions challenging any election to any of those legislatures.

The executive power in Part A States is vested in a Governor and a council of ministers headed by a Chief Minister. The Governor is appointed by the President for a period of five years and holds his office during the pleasure of the President. As the President is expected to act as a constitutional head of the state on the model of the British monarch, we may take it that the Governor is practically a nominee of the Central Government. In other words, he is appointed on the recommendation of the Prime Minister and is liable to be removed from office by the same authority. By convention, the Chief Minister of the state for which the Governor is appointed is generally consulted by the Union Government. Any person,

who is a citizen of India and who is not less than thirty-five years of age, is eligible for appointment as Governor. A Governor should not be a member of any house of the State Legislature. He should not hold any office of profit ; but he is entitled to the use of official residences free of rent and to such emoluments, allowances and privileges as may be prescribed by Parliament and they should not be changed during his term of office. Every Governor before he enters upon his office as Governor must take an oath or make an affirmation in the presence of the Chief Justice of the High Court of the State to the effect that "I will faithfully execute the office of Governor (or discharge the functions of the Governor) of.....and will to the best of my ability preserve, protect and defend the constitution and the law and that I will devote myself to the service and well being of the people of..... (name of the State)." As the President of the Union is the formal executive head of the Union, so also the Governor is the nominal head of the State Executive. The Governor appoints the Chief Minister and, on his recommendation, the other ministers. The Chief Minister under normal circumstances will be the leader of that party which commands an absolute majority in the Legislative Assembly. All executive action is taken in the name of the Governor. He also appoints the Advocate-General and the members of the Public Service Commission of the State. As in the Union, in the State also, there is a Council of Ministers. All decisions of the Council of Ministers regarding proposals for legislation as well as administration have to be communicated to him by the Chief Minister. He has a right to call for any information regarding the administration either in general or with regard to any particular department of government. He has also the right to appoint about one-sixth of the total number of the members of the Legislative Council if there should be one such. It is his duty to summon, prorogue and dissolve the State Legislature at his discretion. He has a right either to address both Houses of the State Legislature at the opening session or he can send messages. No bill can become law unless it receives the assent of the Governor. When a bill after having been passed by the State Legislature, is presented to him for his assent, he may give his assent or at his discretion return the bill to the legislature for reconsideration or he may reserve it for the consideration of the President. Like the President in the Union the Governor of a State also has the power to promulgate ordinances during the recess of the legislature. Such ordinances must be laid before the legislature when it reassembles. The ordinances are valid till the expiry of six weeks from the date of the reassembling of the legislature. Though a period of six weeks after the reassembling of the legislature is mentioned as the maximum time limit, there is no obligation imposed on the Governor to summon simultaneously with the promulgation of the ordinance a session of the State Legislature. Further, no demands for grants of money and no money bill can be introduced in the State Legislature without his recommendation. He must be consulted by the President regarding the appointment of the judges of the High Court. The Governor has power to grant pardons,

reprieves, respites or remissions of punishments or to suspend, remit, or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

The State Council of Ministers resembles the Union Council of Ministers with regard to its status, powers, and functions as well as its relation to the Governor except in one or two respects. Thus, the real executive in the State is the Council of Ministers. The Governor is expected to act as a constitutional head of the State ; but he need not consult or pay heed to the advice of the ministers in matters where he is required to act in his discretion.

As the system of government envisaged in the State is a parliamentary executive, the ministers will be usually selected from among the members of the State Legislature. If any minister is not a member of the State Legislature at the time of his appointment as minister, he must become one within a period of six months or else he should resign. All the ministers, whether members of the legislature or not, have the right to attend the meetings of the State Legislature. As in the Union, the constitution definitely mentions that the ministers are collectively responsible to the Legislative Assembly (Art. 164).

The State legislature consists of the Governor and a legislature consisting of one or two houses. Wherever there is a bicameral legislature, the lower house is called the Legislative Assembly and the upper house is called the Legislative Council. Where there is only one house, the legislature is known as the Legislative Assembly. In the following A Class States, we have a bicameral state legislature : Bihar, Bombay, Madras, Punjab, U. P., and West Bengal. Amongst Part B States, only Mysore has an Upper House.

The Legislative Council consists of a number of members not exceeding 25% of the total membership of the Legislative Assembly of the State. Of the total number, one-third should be elected by municipalities, district boards, and such other local bodies or authorities in the State as the Parliament may specify by an act ; one-twelfth of its total membership should be elected by graduates of three years' standing ; one-twelfth by teachers employed in educational institutions of prescribed categories *i.e.*, teachers of at least three years' standing employed in educational institutions not below the rank of Secondary Schools ; one-third by the Legislative Assembly of the State ; and the remainder by nomination by the Governor from among persons possessing special knowledge in literature, art, science, and social service.

The Legislative Council is a permanent or continuous body not subject to total dissolution ; but, one third of its members retire every second year so that each member sits for a total period of six years. The Legislative Council of a state can be abolished by a

simple method *i.e.*, a resolution of the Legislative Assembly of the State supported by a majority of the total membership and by a majority of not less than two-thirds of the members present and voting. Then, such a resolution of the Assembly abolishing the Legislative Council is communicated to the President and the Union Parliament may by law abolish the Legislative Council of the State.

The Council elects a Chairman to preside over it, and the Assembly elects a Speaker.

The Legislative Assembly is directly elected on the basis of universal adult suffrage (Art. 326) for a term of five years. There is also provision for representation of minorities for the first ten years from the commencement of the constitution; seats have been reserved for scheduled castes and scheduled tribes roughly in proportion to their population. Further, if the Governor of a State is of opinion that the Anglo-Indian community requires representation in the Legislative Assembly, he may nominate members of this community to the Assembly (Arts. 330-334).

The number of members of the Legislative Assembly should not be less than sixty nor more than three hundred.[1] For election to the State Legislature a person must be (*a*) a citizen of India; (*b*) not less than twenty-five years of age for a seat in the Legislative Assembly or not less than thirty years of age for a seat in the Legislative Council; (*c*) must possess such other qualifications as may be prescribed by law by Parliament. The disqualifications for membership of all legislatures in India are practically the same, as detailed in connection with the House of the People.

The State Legislature has the power to make laws on all subjects enumerated in the State List as well as in the Concurrent List. Under normal conditions and circumstances, it has absolute and exclusive powers to legislate on the items contained in the State List; and neither the Union Government nor the Union Parliament can encroach upon its exclusive sphere. But, if the Council of States passes a resolution by a two-thirds majority that it is in the national interest that the Parliament should legislate on any of the subject or subjects in the State List, the Parliament can encroach on the State subjects and pass any law regarding them. Further, if and when the President issues a Proclamation of Emergency as is specified in the Constitution, he may authorise the Union Parliament to pass laws on subjects contained in the State List. Again, at the request of the State Legislature of either one or more than one State, the Union parliament can pass laws on State subjects. Thus the legislature of a State may not possess at times absolute and unfettered power to pass laws even on subjects exclusively reserved for it. Its power to pass laws even on subjects contained in the Concurrent List is hedged in by limitations. The constitutional

[1] The strength of the Legislative Councils and Assemblies is fixed by the Representation of the People Act of 1950.

position is that if a law of the Federal Government on a concurrent subject should come into conflict with a State law on the same subject, the Federal law prevails over the State law, and the State Law, to the extent of its inconsistency with the Federal law, will be null and void. In other words, Federal law on a concurrent subject overrides a State law on the same subject. But, in India, under the new constitution, if the State laws on concurrent subjects have been reserved for the consideration of the President and further, if they have received the assent of the President, these laws will prevail over the Union laws on the same subject, subject to one limitation *viz.*, that such laws will be valid only within the boundaries of the States concerned.

There are also other limitations on the legislative powers of the State Legislature. Wherever the Governor is required to act in his discretion, those matters do not come within the jurisdiction of the State Legislature. The State Legislature has no power either to abolish or to restrict the jurisdiction of a High Court which has jurisdiction outside that State. Further though trade, commerce or intercourse must be free throughout the country, a State Legislature may impose such reasonable restrictions on them in the public interest, but such bills imposing any such restriction cannot be introduced in the State Legislature without the previous sanction of the President. Again, when the President of the Union at any time issues a Proclamation of Emergency under Article 356 of the constitution declaring the failure of the constitutional machinery of a State, he can take over the administration of the State and authorise the Union Parliament to pass such laws as are found to be necessary for the administration of that State. In this connection, it must be remembered that such a provision is similar to Section 93 of the Government of India Act of 1935. but with this difference that the Act of 1935 introduced Governor's rule instead of President's rule.

In States, where there are two chambers, there is some difference with regard to the powers and functions of the two Houses. Money bills must be invariably introduced in the Legislative Assembly (Lower House). When they are passed by the Lower House, they are sent to the Upper House *viz.*, the Legislative Council, and they become law after receiving the assent of the Governor after a period of fourteen days has elapsed from the date of the receipt of money bills by the Upper House irrespective of the consent or otherwise of that House. In short, the Legislative Council of a State, like the Council of States in the Union, has practically no power with regard to money bills. The worst that it can do is to exercise its only power *viz* , a suspensive veto of fourteen days. As in the Union, the voting on demands for grants is the exclusive privilege of the Legislative Assembly of the State. Ordinary bills can be introduced in any House of the State Legislature and must be approved by both. If a bill passed by the Legislative Assembly is either rejected by the Legislative Council, or passed by the Legislative Council with such amendments as are not acceptable to the Legislative Assembly, or a

period of more than three months should elapse without the Legislative Council taking any action on the bill, the Legislative Assembly will pass the bill a second time and send it on to the Legislative Council. It will then be deemed to have been passed by both Houses after a period of one month.

As in the Union, though the Legislative Council can exercise some kind of control over the government by means of questions, resolutions, adjournment motions, etc., the ministry is really responsible only to the Legislative Assembly. The Legislative Council has no power to pass a vote of no confidence against the ministry leading to its resignation. The power to compel the resignation of the ministry is the exclusive privilege of the Legislative Assembly.

Every State in Part A and B states of the Union has a High Court which is the highest court for the State and stands at the top of the judicial system of the State with a number of subordinate courts below it. Part C states have either a judicial commissioner or are placed under the jurisdiction of a High Court in a neighbouring State of Parts A and B. Every High Court is a court of record, like the Supreme Court, and has all the powers of such a court including the power to punish for contempt of itself. It consists of a chief justice and other judges whose number is determined by an order of the President. The power to establish a High Court is given to the Union Parliament. The judges of the High Court, like those of the Supreme court, are appointed by the President. Regarding the appointment of the Chief Justice of the High Court, the President consults the Chief Justice of the Supreme Court. Similarly in appointing the other judges of the High Court, the President consults the Governor of the State and the Chief Justice of the State High Court. The judges of the High Court hold office until the age of sixty. They can be removed from office only on the ground of proved misbehaviour or incapacity and in the same manner as the judges of the Supreme Court.

A person to be appointed a judge of the High Court (*a*) must be a citizen of India, (*b*) must have held a judicial post at least for a period of ten years or must be a practising advocate of ten years' standing. The conduct of a judge in the discharge of his duties should not at all be discussed in the State Legislatures ; it can be discussed only in Parliament, and that too, only in connection with a resolution for his removal on the ground of proved misbehaviour or incapacity. Their salaries and allowances are determined by Parliament and are also charged on the Consolidated Fund of the State concerned. They should not be altered to the disadvantage of the judge after his appointment. Similarly their rights and privileges regarding pension, leave of absence etc., are safeguarded. Every judge of a High Court before he enters upon his office must take an oath or make an affirmation as prescribed in the Third Schedule of the Constitution to the effect that "I will bear true faith

and allegiance to the Constitution of India as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws."

The Chief Justice of a High Court is empowered to appoint retired judges of the Court as *ad hoc* judges for short periods with the previous consent of the President.

The jurisdiction of the High Court covers all cases under both Federal and State laws. The court is given the power to frame its own rules, to regulate its sittings, practice at the bar, etc. It has jurisdiction in civil, criminal and revenue cases, both original and appellate. Further, the High Courts are empowered by the constitution to issue writs, directions or orders in the nature of the appropriate writs to any person, authority, or government not only for the enforcement of the fundamental rights guaranteed to the citizens in Part III of the Constitution, but also for any other purpose. This power of the High Court to issue writs is not its exclusive right but it is only a concurrent right and it is subject to the same power conferred on the Supreme Court by Article 32 of the constitution. But, it must be noted that the power of the High Court under Article 226 is wider than the same power conferred on the Supreme Court, for while the Supreme Court can issue writs only for the enforcement of the fundamental rights of the citizens, the High Courts can issue the appropriate writs not only for the enforcement of the fundamental rights but also for any other purpose. Parliament is empowered to enlarge the jurisdiction of the High Court to cover areas outside the boundaries of the State. For instance, any neighbouring Part C State can be placed under the jurisdiction of a High Court in a Part A or B State. The High Court is invested with the power of supervision and control over subordinate courts and tribunals within the boundaries of the State. But the military courts are exempted from the purview of the High Court. The High Court has the power to revoke any judgment of a subordinate court or to take over any case pending in a subordinate court which involves either the determination of any substantial question of law or the interpretation of the constitution.

The Chief Justice of the High Court is given the power to appoint the officers of the court, but in making such appointments the Governor of the State may direct him to consult the State Public Service Commission. The salaries of the officers of the court like the salaries of the judges are charged on the Consolidated Fund of the State.

The division of powers between the centre and the units is regulated by Articles 245-263 in Part II of the Constitution and by its Seventh Schedule. The Union List includes Defence, External Affairs, Citizenship including Emigration, Communications (Railways Shipping, Inland Waterways, Ports, Airways, Posts, Telegraphs,

Wireless, etc), Currency and Banking, External Commerce including customs, patents, weights and measures etc. manufacture of opium and salt, Union Services, Protected monuments. Central Institutions like the various surveys of India, National Library and Research Institutions etc.

The State List includes Public Order and Police, Administration of Justice (including prisons), Local Government, Public Health, Education (including liabraries and museums,) Agriculture (including irrigation, forests, fisheries and animal husbandry), Mines, Industries, Trade and Commerce within the State, State Services, Relief of the disabled and the unemployed, Liquor and Prohibition, Entertainments, State Property etc.

The Concurrent List includes Criminal Law, Marriage, Adoption, Wills, Contracts, Bankruptcy, Civil Procedure, Adulteration of Food and Drugs, Economic and Social Planning, Labour Problems and unions, Social security and welfare, Price control, Control of infectious diseases etc.

The residuary powers are vested in the centre.

The States are accorded a more restricted and distinctly subordinate status than is warranted by the federal character of the constitution The federating States in India enjoy much less executive and legislative powers than either the American or the Australian States or for that matter even the Canadian Provinces.

1. The Governor of a state is appointed by the President of the Indian Republic who is the head of the Union executive. The position, status, powers and functions of the Indian Governor are practically the same as those of the Lieutenant Governor of a Canadian province. This is not the case either in Australia or in U.S.A.; in Australia the governor of a state is appointed by the Crown on the recommendation of the State ministry. In America the Governors of states are elected.

2. Under the Indian constitution, Article 356 empowers the President in the event of the breakdown of the constitutional machinery of the State to take upon himself the responsiblity of running the government and the Union Parliament is empowered to exercise any or all the powers of the State Legislature. Such a provision is not found in any other federal constitution in the world. The constitution can work smoothly and also successfully only so long as the same political party is in power both in the Union and in the States. But when the party in power in a State is different from the party in power in the Union, there is bound to be friction between the two. Even the history of the working of the constitution during the last few years goes to confirm the fears that were generally entertained by the critics of the constitution. The provision for the interference of the Union Government, in the affairs of the State goes against the autonomous character of the federating units.

3. Again, there is a provision in the constitution for the reservation of certain State bills by the Governor of a State for the consideration of the President who may give his assent or who may withhold his assent to it. Though this has been borrowed from the Canadian constitution, the framers of our constitution forgot that there is now no need in India for a provision like that. For, even in Canada, this power of disallowance was rarely used and because it has not been used frequently the presumption is that it has fallen into disuse. The last occasion when the Governor-General of Canada exercised this power was in 1933. Since that time, this power has not been used. In defence of such a provision in our constitution, it may be said that the Indian President has not so far exercised this power ; but then one should not be blind to the fact that the same political party is in a State government as well. Though it has not been used so far, it is a serious bar on the autonomy of the constituent units of the federation. Such a power is not found in the constitutions of either the U.S.A. or Australia.

4. Article 249 of the constitution empowers the Union Parliament to pass any law even in respect of items enumerated in the State list, when the Council of States passes a resolution by a two-thirds majority to the effect that it is necessary or expedient in the national interest.

5. Article 250 of the constitution provides that while a Proclamation of Emergency is issued by the President as a result of an emergency arising or likely to arise whereby the security of India or any part thereof is in danger either by war or external aggression or internal disturbance, the Union Parliament has the power to make laws on matters contained in the State list. This is a unique provision in federal constitution and is not found in the constitution of any other federal state in the world. Such an interference in the affairs of a state on the part of the Union Government is justifiable if there is a war or threat to the security of India. But the provision for issuing such a proclamation of emergency as a result of an internal disturbance is liable to be misused by the party in power. For instance, taking advantage of any small trouble in any State particularly when a different party is running the government of the State, the Union Government can issue a Proclamation of Emergency and suspend the constitutional machinery of the State.

6. The constitution also contains provision for federal compulsion and for federal directions to the State governments. For instance, the Federal Government can require that the executive power of every State shall be so exercised as to secure compliance with the Union Laws and the Union Government has power to give such directions as deemed necessary for the purpose. The Union Government can also give directions to the State Government for the construction and maintenance of means of communications such as railways and highways, which are also of military or national importance. Further the executive power of a State must not be exercised in such a manner as to prejudice or impede the exercise of

the executive power of the Union. Article 365 declares that in the event of any one particular State refusing to comply with the directions given by the Union Government, the President can declare the failure of the constitutional machinery of that State and assume to himself all functions of the State Government.

7. The distinctly subordinate and inferior position of the federating units is amply borne out by the provisions for (*a*) only one Election Commission appointed by the President of India whose chief duty is to control and conduct elections not only to the Union but also to the State Legislatures ; (*b*) one Union Public Service Commission with powers to select members of the Indian Administrative Service as well as other all-India services. But, the officers selected by the Union Public Service Commission may work either under the Union Government or the State Government. (*c*) The Comptroller and Auditor-General of India, who is also appointed by the President, is empowered to discharge such duties and perform such functions in relation to the States as may be determined by Parliament. The accounts of the State must conform to the methods of maintaining accounts as prescribed by the Comptroller and Auditor-General.

8. Though responsible government has been provided for both in the Union and in the States, the Governor of a State is entrusted with some discretionary powers while such is not the case in the Union. This provision also is an assault on the autonomy of the states, for the Governor is nominee of the President. But, this discretion given by Art. 163 is, in practice, given only to the Governor of Assam (Sixth Schedule) and may be justified owing to the need to safeguard the tribes in this area.

9. Though India has adopted the federal form of government, it has provided for only a single integrated judiciary, *i.e.*, one set of courts to interpret the constitution. Here also our constitution is based on that of Canada. In Australia as well as in U. S. A. there are two different sets of Courts, one Federal and the other State, the highest federal court in Australia being the High Court of Australia and that in U. S. A. being the Supreme Court.

10. The provision for promulgating ordinances during the recess of the Legislature by the President in the Union and the Governors in the States is also a feature which is not found in any other federal constitution and which is a relic of the Government of India Act of 1935. Such a power is not given to either the American President or the Governor-General of Canada or of Australia. These factors go to confirm the view that in the Indian Federation there is over-centralization.

It is fair, however, to remember that our past history has shown that centrifugal tendencies have been always dominant and have prevented the unification of the country which is essential if our country is to occupy the important position in the world which she is entitled to. The framers of the constitution must have felt the paramount necessity of safeguarding this unity.

The criticism that our constitution is a deviation from the usual federal pattern can be met by the answer that there is no particular sanctity attached to the usual pattern. After all, governments are made for men and the true test is whether a government works well in practice. There can be no valid objection to India developing her own pattern of federalism such as will suit her own genius and needs.

It is also clear that, in spite of the large powers possessed by the centre, the States have large powers in respect of actual nation-building activities in various fields like agriculture, industry, commerce, education, health etc., the function of the centre being mainly co-ordination and control in the interest of uniformity.

The constitution has prepared the way for the emergence of a strong, well-organised democratic state suited to our traditions. The Indian people can successfully work this democracy if they apply the intense moral and patriotic fervour and zeal for sacrifice exhibited during the fight for freedom to the actual work of government of this great country.

We turn now to local government. India is a land of villages. Even many townsmen have their moorings in villages ; but, as Dr. Slater shows in his *Economic Survey of South Indian Villages*, with the decline of the old Panchayat, villagers lost all tendencies to co-operate and even their disputes were taken to the courts. The statement of Keene in his *History of India* that the germs of home rule already existed in the traditional institutions of the rural communes and that into this feeble body Ripon tried to instil the breath of life is wrong. As in old Prussia, the beginnings of local government in India came only after a consolidated and powerful state had been built up by a great bureaucracy directed from a single centre. In the presidency towns, corporations were set up at a very early date. But they became elective only after 1861. Ripon introduced new agencies like the District Boards. The *Cambridge Short History of India* considers that the scheme of local government build up by him and his successors was a failure on the whole. Ripon began it as a method of popular education. But it did not train the electorate and only increased the duties of the officials. As in France, local bodies were treated as agents for the government and amenable to it, unlike as in England where they are independent bodies, the authority of the centre being limited to general supervision and advice. The powers of the local bodies were also severely limited. The truth was that, at first, local government was treated only as delegation of authority by the centre for purposes of administration except in the presidency towns. Before Ripon, committees consisted of officials. Even in towns, the Town Improvement Act of 1865 provided for the appointment of commissioners to manage municipal affairs. Lord Mayo urged the need of separating provincial from local finance. It was only Lord Ripon who regarded local government as an experiment

in democracy. As the Simon Commission noted, corruption and nepotism flourished. Prof. Gyan Chand (*Local Finance in India*) explodes the theory that local government could be a training ground for responsible government in the wider sphere and holds that only responsible government in the centre could force the people to tackle urgent local problems.

In 1918, the government of Lord Chelmsford issued a comprehensive Resolution on local government recommending elective majorities, lower franchise and greater powers of taxation and borrowing. The Montague-Chelmsford Reforms urged the same. After the Reforms of 1919, there was, on one side, removal of inside control by allowing greater use of election. At the same time, there was also some removal of external control by relaxing restrictions on local bodies.

A village or a group of villages[1] form the Panchayat, with powers over local sanitation and local roads and with a ristricted power of taxation. Baden Powell (*Indian Village Communities*), speaking of the village panchayat, remarks, "There must be an efficient supervision which, however, must be exercised with such wisdom as not to deprive the panchayat of real influence or its self-respect." The panchayats have now been given greater powers including petty civil and criminal jurisdiction.

The District Boards look after local roads, bridges, hospitals and schools while the municipalities look after local matters concerning their areas. In large ports there are Port Trusts mainly nominated by government. There are also Improvement Trusts nominated by the various bodies like the government, chambers of commerce etc. Cantonments are under special administration. Local bodies depend on profession taxes, licence fees on vechicles, rates on property, revenue from markets and ponds etc. They could also collect a cess on land ; but they depend also on grants from the government.

The unit of administration is the district. The district is under the district officer called the Collector, a name coming from his function of revenue collection. In some provinces, the district is part of wider unit called a division under a Commissioner. The *Imperial Gazetteer* thus describes the district officer : "Whether known as Collector-Magistrate or Deputy Commissioner, he is a responsible head of his jurisdiction. His special duties are so enormous and so various as to bewilder the outsider, and the work of his subordinates largely depends on the stimulus of his personal example. His comparison to the French Prefect is in many ways unjust to him. He is not a mere subordinate of a central bureau who takes his colour from his chief and represents the

[1]For a description of the village community in later times, see *Imperial Gazetteer*, Vol. 4, Ch. 9. Dr. Matthai (*Village Communities in British India*) shows the survival even today of some of these communities. Dr. Slater (*Economic Survey of South Indian Villages*) has also some interesting observations.

political parties or the permanent officialism. He is a strongly individualised worker in every department of rural well-being with a large measure of local independence and individual initiative." Since this was written, the rise of specialised services like the Indian Police Service, P.W.D., I.M.S., I.E.S., Agriculture, Veterinary, Co-operation, Labour etc., have relieved the collector of the mass of work which he had to attend to. The main function of the collector is to look after revenue collection. He has to attend to matters affecting cultivators and has to send regular reports to government about crops and prices. He has to look after famine relief. He is also responsible for peace and order, and the police department works with him in close co-operation. In most parts of India, he is still concerned with criminal justice, though, in states like Madras, separate magistrates have been appointed for this work. The collector exercises general supervision over the district. He has to go on frequent tours, generally supervises local government and is usually also the returning officer for elections. Though specialised departments have taken away much of his former work, he has still a good deal of work. Thomas (*Federal Finance in India*) points out that the administration in India is a huge experiment in state socialism.[1] A district officer has to rely on his own intelligence and resources to invent many things. There is greater government control than in other lands. Maintenance of minute land records field by field and famine works take a good deal of his time. The government is impartial and efficient and the Indian official is trained to a sense of public duty. The collectors formerly taken from the I.C.S., are from 1950 recruited from the I.A.S. The district has got subdivisions. In Madras, Bombay and U.P. there are taluqs under officers called Tahsildars or Mamlatdars. The lowest unit is the village where the government representative is a Revenue Inspector or Qanungo. There are also village officers like the Karnam, Chowkidar etc.

The idea of a Public Service Commission for recruitment of public servants began only with the Act of 1919. The Central Public Service Commission was set up in 1926. After this only a few States like Madras had such commissions. The Act of 1935 instituted such commissions in all provinces. After Independence, there is a Union Public Service Commission for the centre and a Service Commission for each State or a group of States.

The Company developed an army. But each presidency had its own force. After the renewal of the charter in 1798, these three presidencies were formed and each had an army of its own. From the time of Major Lawrence and Governor Saunders of Madras in 1753, conflicts between military and civil authorities were common. After the Mutiny, as a result of the Army Amalgamation Scheme recommended by the Peel Commission, the Com-

[1] Previous to Independence, the Civil Service not only administered but governed.

pany's forces were amalgamated with the royal forces in India. But, as Mr. Ruthnaswamy points out,[1] one bad result of the Mutiny was the intensive disarmament of the people and racial discrimination in bearing arms. The question of frontier defence also became important. The same author points to the analogy to the frontier problem of the Roman Empire in the methods of recruitment of the frontier force and the influence of the Punjab on the Government of India.

Under the Cardwell system introduced in 1872, the British army in India came to be a part of the impartial army stationed in India for a particular period, and India made a contribution for its expenses. The theory was that the Indian army was for purely Indian needs. But, in practice, it was organised as an imperial machine. There were complaints in India about the great expenditure on the army. The development of the Indian armed forces had to take the pattern of the British system to suit the role India was expected to occupy in the British defence system. The Welby Commission on India's Public Debt suggested in 1920 that England should contribute a share in the cost of transporting troops to and from India and the cost of oversea expeditions. The British government agreed to this. During the viceroyalty of Willingdon, in 1933, on the report of a tribunal, the British government agreed to make an annual grant to the military budget of India. The Chatfield Committee, appointed to report on the reform of the Indian army on modern lines, suggested mechanisation of the cavalry and a large part of the infantry. To meet the heavy cost of this, the British government should give a contribution. The defence of India would mean not only local defence but defence of points outside India which were strategically essential for her security. The commission felt that no hostile country should control the countries bordering the Bay of Bengal or the Indian Ocean. These conceptions have become antidated after Independence.

Lord Kitchener, while Commander-in-Chief, organised the army in commands and divisions so that efficient mobilisation for frontier defence could be automatically carried out. Previously, while the commander-in-chief looked after the army, a separate military member was the adviser of the viceroy regarding its finance and supplies. Kitchener had this changed. The military member disappeared, and the commander-in-chief took his place. As a result, the commander-in-chief became over-worked and the control of the government over military policy was also affected. Hence, during World War I, the Indian army undertook duties in Iraq without proper preparation and organisation. Transport supplies and medical service broke down and the operation failed in 1914 and 1915. Though, later on, the position was retrieved, the commission of enquiry which followed, strongly condemned the

[1] *Some Influences that made the British Administrative System in India* Ch. 2. See also *Indian Review*, Oct, 1930 (article "Army and Navy in India" by Sir P. S. Sivaswamy Iyer).

Kitchener system. But, the Esher Committee of 1919 appointed to report on the organisation of the army, supported the existing position and no change was made. When the Interim Government took over power in 1946, the commander-in-chief was not only the head of all the three services (army, navy and air force) but was also the defence member. A new defence minister was appointed now. After 1947, each service has its own commander-in-chief (called from 1955 as Chief of Staff).

Indianisation proceeded slowly. Till World War I, the officers were purely British. In recruitment of the soldiers, the army came to be enlisted more and more from the so-called "martial classes" of the Punjab and Nepal. Before the Mutiny, the army was recruited from all classes and castes. The new policy made the Punjab and Nepal richer ; but deprived the people of the other areas of opportunity to serve in the army. It was only during World War II that this unreal distinction was given up. In 1941, the Madras Regiment was revived and new regiments were created for Bengal, Bihar and Assam. After World War I, first Sandhurst and then Woolwich were opened to Indians. It was not till 1918 that King's Commissions were issued to Indian officers. Till now, they held only Viceroy's Commissions which prevented them from commanding British troops in the Indian army. A scheme of Indianising complete units was also adopted by posting Indian Officers to Indian units which were at first 8 and later 15. The sub-committee of the Round Table Conference resolved that "the defence of India must, to an increasing extent, be the concern of the Indian people". This led to the appointment of the Indian Sandhurst Committee under Sir Philip Chetwode, commander-in-chief, which recommended the establishment of a military college in India. This was set up at Dehra Dun in 1932. The policy of posting Indian officers for only Indian units was abandoned during World War II when they were made eligible to be appointed to all units. Under the stress of this war, there was much expansion. Factories in India began to manufacture munitions as recommended by the Chatfield Committee. In this war, Indian troops served in all theatres and Lord Wavell declared that "it was due to the soldiers that India sent and the materials which she supplied that we held the Middle East and that debt must not be forgotten."

After Independence, Indianisation advanced rapidly. The army was fully almost Indianised from the commander-in-chief downwards by 1948. India's target is self-sufficiency with regard to military supplies and equipment. In 1955 the National Defence Academy was shifted to Khadakvasla, near Poona, from Dehra Dun.

Behind the army were the Auxiliary and Territorial Forces which were started in 1921 under the control of the defence department. The territorial force consisted of only infantry. After Independence, a new territorial force was formed in 1948 which included artillery

and technical units like engineers also. The object of this is to relieve the regular army of static duties. To inculcate elementary military training to the people, a National Volunteer Force is to be formed (1955).

A certain number of princely States had maintained forces called the Imperial Service Troops trained by British officers. These were not subject to the defence department, but could be used in emergencies. From 1939, these were organised with the aid of the Government of India into (1) Field Service Troops trained and equipped like the Indian army so that they could be used for service outside the state ; (2) a certain proportion, less equipped, which consisted of General Service Troops meant to be a second line of defence ; and (3) another proportion consisting of State Troops meant only for internal security. Thus the Government of India was able to get a kind of supplemental force. The old subsidiary system was inverted. When these states were integrated after Independence, the Government of India took over the state forces from 1950 and they hereafter came to be a part of the Indian army and on a par with it.

In 1613, the Company created the Indian Marine. After the Crown took over administration, it was called the Royal Indian Marine from 1892 and was used as an adjunct to the Royal Navy. In 1934, it was called the Royal Indian Navy and received expansion in World War II. Thus, the navy expanded into a large ocean-going fleet from being a small fleet meant for coastal patrol. After Independence, it has been renamed the Indian Navy and is being expanded greatly. It is still under an English Commander-in-Chief. But Indianisation has greatly advanced.

The air force is the youngest of the three forces. As recommended by the Skeene Committee Report of 1927, it was set up in 1932. It was expanded during World War II and was called the Royal Indian Air Force. In 1950, after Independence, it has been called the Indian Air Force. Indianisation was completed in 1954 when an Indian commander-in-chief was appointed.

India, though politically independent, still depends on foreign military aid in material and equipment, aircraft and warships.

The Company introduced greater regularity and organization in the collection of revenue. A large part of it came from land revenue and salt tax. But the Company did not fashion a satisfactory financial system. It simply took over the revenue resources of the past, on adjusting them to suit new circumstances. In the time of Warren Hastings, besides land revenue, there were customs duties at $2\frac{1}{2}\%$, and state monopolies of salt, tobacco and betel-nuts. But expenses increased. Share-holders wanted higher dividends. The British government also was often diverting to itself a part of the Company's gain in return for charters. To understand the early financial difficulties of the Company, we

must note that the Company had stopped sending bullion to India and the revenues of Bengal had to be utilised, not merely to run the government, but also for the annual "investments" (to pay for the exports of the Company).

Lord Cornwallis carried out necessary reform and, when he left India, there was a financial surplus. But Wellesley's wars led to a deficit again. The directors were keen on a policy of non-intervention, because wars affected financial returns and enlarged their political liabilities.

Lord William Bentinck lessened expenditure by retrenchment and employment of cheaper Indian personnel. He also reformed the coinage. The Company had selected silver as the standard coin. In 1818, the gold pagoda of South India was substituted by the silver rupee which was already prevalent in North India. But, till 1835, rupees differed in weight and fineness in different parts of India. In 1835, a standard silver rupee was set up for the whole of India, and thus a standard silver currency began from 1835.

After Bentinck, expenses again increased. The Company's commerce had declined, and therefore revenue from taxation became important.

The Company developed also a Public Debt which was unknown before. As the revenue was not sufficient to pay dividends, this debt began, and was increased by wars and deficits in government. When the Company ceased to be a commercial organization in 1833, it still had a right to dividends and, when it ceased to exist in 1858, its stock was paid off by loans. All this and the expenses of the Mutiny increased the debt. It was £100 million when the Crown took over the government.

Since the debt was raised in England, India had to send heavy payments in interest to England. This formed the major part of the so-called "Home charges". The other items included in these were civil and military pensions, army expenditure in England, civil expenditure for India in England, freight charges etc., (payment for shipping, banking and marine insurance, as India had no ships, exchange banks or marine insurance interests located in India then). The extent of these "Home charges" led to the rise of the "theory of Drain"[1].

It was pointed out that India had a continuous surplus of exports over imports from 1842-43, but there was no visible return except import of bullion in part. The rest was regarded as exploitation. Anstey in her appendix to *Economic Development of India* considered, in reply to this criticism, that the advantage lay on the whole with India. Knowles regarded the increase of prosperity in India as inconsistent with this theory of the "Drain". Sir T. Morison (*Economic Tradition in India*) also refutes this theory. But,

[1] Shah and Khambatta discuss this in their *Wealth and Taxable Capacity of India*. See also Dutt.

impartial judgment would hold that a bulk of the "Home charges" was due to the economic stranglehold kept by England over India. "Home charges", small under the Company, swelled greatly under the crown.

When the crown took over the government, there were huge deficits, as the Mutiny had cost much. Wilson, the first finance member, imposed an income tax and other taxes like licences on professions. He was appointed in 1859 as a financial expert. He was followed by Laing. From 1860 began effective budgets. The general policy came to be to borrow only for wars or productive expenditure on irrigation or railways.

But deficits continued under Lord Lawrence and Lord Mayo. Increased cost of administration increased expenses. The general fall in prices which prevailed till 1860 came to a stop and prices[1] began to increase all over the world. This rise was due to increase in the world output of precious metals and increase of credit facilities in the world. Growth of Indian exports increased influx of precious metals into India. This increase of prices in India lasted up to 1920. This also increased expenses. Further, currency difficulties appeared. Till 1871, ten rupees equalled a pound. But, from 1873, the gold value of silver began to fall owing to increased silver production in mines, demonetisation of silver by Germany and renunciation of bimetallism by the Latin Union. Between 1873-74, this depreciation of silver affected a silver-standard country like India which had the bulk of her transactions with a gold-standard country like Britain. Since the Indian Mint remained open to silver, the rupee depreciated.[2] India had to pay increased "Home charges". Flow of capital (mainly from London) was hindered and trade affected. Expenditure on public works and railways had to be restricted. Further taxation became necessary.

Lord Mayo carried out economies and increased the income tax. The consequent surplus had enabled Northbrook to abolish the income tax, and Ripon, a free trader, to abolish the older protective duties. But exchange difficulties forced Lord Lansdowne to increase the tax on salt. The Government of India tried in vain to bring about an international agreement to fix the relative value of gold and silver. In 1893, the rupee fell to the value of just a fraction of a penny over a shilling. The (Lord) Herschell Committee suggested that it should be stabilised at 1sh. 4d. (instead of 2sh. 6d. in the early nineteenth century) and that the Indian mints should be closed to free coinage of silver, thus divorcing the rupee from silver, reducing the supply of rupees and raising its value. The committee visualized the change of the system from silver to gold after the rupee became stabilised at 1sh, 4d. Till 1900 financial difficulties continued. Lord Elgin II had to reimpose the duties of 5% on imports owing to the need for money. Owing to English political pressure, a

[1] For the history of prices see *Imperial Gazetteer*, Vol. III, Ch. 9.
[2] Chablani—*Indian Currency and Exchange.*

countervailing excise was imposed on Indian mill goods in cotton. The income tax was made permanent. In 1896, the import and excise duties were reduced to $3\frac{1}{2}\%$. The rupee, which reached its lowest level in 1895, gradually rose to 1sh. 4d. by 1898 where it was maintained by the government according to the recommendation of the Fowler Committee of 1898. This committee recommended also the establishment of a gold currency based on the British sovereign. But this step was not taken. Though in 1899 the British sovereign was made legal tender at the value of Rs. 15, the government satisfied itself by stabilising the rupee at 1sh. 4d. by careful regulation of the sale of "commercial bills" and "reverse councils". Thus was set up the gold exchange standard which, according to Sir Basil Blackett, should be more correctly called the sterling exchange standard. This system was upheld by the Austen Chamberlain Commission of 1913 which deprecated the idea of a gold coinage. Keynes was one of the ablest exponents of this system. But its defect was that it was bound to be upset by fluctuations in the sterling exchange.

From 1899, there were budget surpluses. World War I again dislocated public finance. Unproductive debt, which had almost disappeared, now again increased. Taxes had also to be increased.

Currency crisis again appeared owing to the rise in the value of silver because of increased demand in China and lessening of silver production in Mexico owing to a civil war there. The Government of India had supplied a vast number of Indian goods for war purposes and had a heavy "favourable" balance of trade. But import of goods from Europe was hampered by war restrictions. Import of gold was hindered by the refusal of gold standard countries to part with their gold supplies. The government had to give up control of exchange. From 1917 to 1920, exchange depended on the price of silver. In 1917, the government had to issue nickel coins and paper currency for small denominations. The Babington-Smith Committee advised the linking of the rupee to gold at the value of Rs. 10 to the sovereign, that is, at 2sh. The committee expected that there would be a continued "favourable" balance of trade and that the price of silver would continue to be high. Both expectations were belied. From 1920-22, exchange turned against India. Imports had been ordered at the high prices of the war period, while exports were affected by the world slump in post-war prices and by bad monsoons in 1918-19 and 1919-20. Exchange also began to fall. By 1920, the rupee reached 2sh. 4d. its highest point, and then began to fall after the government adopted the ratio fixed by the commission. Serious budget deficits occurred in 1921, 1922, and 1923. Agricultural depression owing to bad harvests continued till 1923. The Indian prices had fallen in sympathy with the post-war slump.

Since the official rate of exchange was above the market rate, government had to bolster the exchange by selling "reverse councils" thus disorganising the money market and incurring heavy losses also. Finally, in 1920, government again gave up its attempt to control the

exchange. Taxation had to be increased, in spite of retrenchment effected as the result of the Inchcape Committee's report. From 1919 there had been deficits for five years. Customs duties and income tax were raised. In 1923, the viceroy, holding that continued deficits would damage India's credit, balanced the budget by certifying an increased salt tax, despite the opposition of the legislature.

The rupee which dropped to 1sh. 3d. in 1923 gradually rose in value and reached 1sh. 6d. in 1924. Normal conditions began by 1924. Owing to surplus, salt tax was reduced. By 1925, the position further improved. Again, there was a surplus. This enabled the abolition of provincial contributions to the centre. Hereafter, budgets were balanced. The Hilton-Young Commission of 1925 advised the fixing of the rupee at 1sh. 6d. . This was done by the government of Lord Irwin. Thus was set up the Gold Bullion standard—a gold standard without an actual gold currency. Since sterling which had been off the gold had been restored to parity with gold in 1925, the exchange was the same in gold and sterling.

Depression again followed in 1929 as a result of world depression. Countries which produced raw materials like India were more affected than others. A great slump in India's agricultural produce began. Prices began to fall during this economic slump from 1929 to 1932. Britain went off the gold standard in 1931. This made the Indian currency a sterling exchange standard. The government had to increase taxes like the customs duties and income tax in 1930-31 ; 1931-32 was worse and further increases followed and 1933-34 was the fourth year of the depression. It was only after that budget surplus began again. But it was only after 1941 that prices again began to increase. By this time, World War II had begun. Increase of prices led to state control of commodities beginning with food-grains. The rupee, which was almost wholly silver in 1835, was now completely nickel. A bill introduced in 1955 for setting up a decimal currency divides the rupee into 100 cents.

Let us, now, turn to consider some of the principal sources of revenue.

Land Revenue. By the 18th century, the revenue was farmed for a number of years in all the Muslim states. The revenue farmer agreed with the headman of the villages about a sum which the headman then allocated amongst the individual peasants. The revenue farmers became hereditary and developed political power, and some of them became chiefs in the area. In the Hindu states like the Mahratta states, though farming existed, the state was still in direct contact with the peasants.

In the early days of British rule, ignorance of old customs and desire to centralise governmental functions led to the by-passing of the village community's function of internal assessment and realisation of revenue. The authorities began to make direct arrangements with individual cultivators. Thus, the village community declined.

In the Zamindari areas, the British never realised that they were only middlemen who collected the taxes and got a commission on the collection and that the ryots had independent hereditary right to their holdings. They regarded conditions as the same as in England where the tenant derived his title from the landlord and paid him rent. Hence the introduction of permanent settlement in these areas.[1]

Warren Hastings held that property in land was vested in the state and so the Company could lease it as it wanted. When the Company took over the Diwani in 1772, a Board of Revenue was set up at Calcutta consisting of the governor-general and his councillors. The treasury (*Khalsa*) was removed from Murshidabad. Below were collectors in each district, helped by an Indian Diwan to look after the revenue.[2] When the Zamindar could not pay the high revenue demanded, Hastings set them aside and sold the estates by auction to the highest bidder. No surveys were made and assessments were made only by contracts resulting from auction.[3] The old Zamindars thus suffered from enhancement of revenue and harsh methods of collection. Men of slender standing, who got the contracts, defaulted and the revenue suffered. At first, settlements were made for varying periods from one to five years. Revenues were usually leased for five years from 1772 to 1777. These quinquennial settlements led to overassessment, resulting in defaults and absconding of ryots. From 1778 to 1781, settlements became annual and ryots suffered even more through excessive assessment. A commission of 1776 appointed by Hastings had already reported about the misery. Macpherson, after Hastings, made the collector the authority for settlement. But the annual settlements were disliked by the British parliament and the Directors were also anxious to secure a permanent revenue. Sir Philip Francis had advocated a fixed settlement with the Zamindars. Shore held that the land belonged to the Zamindar and the state could claim only a rent while Grant regarded land as the state's and the Zamindar as only an official. But both Grant and Shore opposed permanent settlement and wanted only a decennial settlement. In 1789, a settlement was made for ten years. In 1793, it was declared permanent. This made the government popular and stabilised it. Marshman declared that "cultivation has been extended and a gradual improvement has become visible in the habits and comforts of the people". Rushbrook Williams believe that the immediate results were good and the prosperity and wealth of Bengal were increased. Dislocation caused by periodic settlements was avoided.

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[1] R. C. Dutt eulogises this step in his *Economic History of India*, Chapter V. It is now recognised to be an error. See the unfavourable comments in Radha Kamal Mukerjee's *Land Problems of India*.

[2] Ruthnaswamy shows the importance of land revenue in inspiring the origin of the district administration under the collector. (*Some influences that made the British Administration in India* Chap. 3.)

[3] See *Cambridge History of India* Vol. 5.

But Hunter comments on the fundamental errors that vitiated the settlement (Introduction to *Bengal Manuscript Records*). The lands of the Zamindars were not properly ascertained and this led to endless litigation. Holmes condemn the steps as "a sad blunder." The rights of the peasants were ignored. Mill, Smith and Roberts also condemn this. The immediate results were bad to many Zamindars. The assessment fixed in 1793 was double that which prevailed at the beginning of the century. The system of sale for default, which did not exist in India before the British, displaced many of them in favour of selfish speculators who had no tie with the peasants, local or personal. Wellesley granted Zamindars in 1799 the same powers of distraint which were abused. No attempt was made to define the customary rights of peasants. The foreign administration had no knowledge of the economic and social conditions of the people[1].

The Bengal Land Revenue Commission headed by Sir Francis Floud reported (1940) in favour of abolishing the Zamindari system with compensation, and setting up direct relations between the states and the ryots.[2] The system had outlived its usefulness and was responsible for the backwardness of agriculture. The *Fifth Report* favoured only the Ryotwari system and attempt to extend the Zamindari system to Madras was decided against.

In the U. P. areas,[3] Mackenzie (Secretary to the Board of Commissioners appointed by Lord Hastings to report on the settlement of land revenue), in his minute, drew attention to the existence here of a corporation of landlords who were joint owners of the land. These landlords must have got this position by a grant from a ruler by revenue-farming. Sometimes they might have been descended from a body of men, who originally colonised the village or became the superiors of earlier inhabitants. This group employed labourers, artisans and traders. Mackenzie showed that in places the rights of this group were usurped by big landlords (Taluqdars) and urged the restoration of their rights.

The village lands here were more closely knit than in South India, where separate, individual holdings were the rule. Here, lands were owned in common by family groups and tilled by a group which had occupancy rights. These brotherhoods collectively undertook to pay the revenue due from the village as a whole. The British settled the revenue with these groups for thirty years on the basis of two-thirds of the rental value. A long time was spent in drawing up a Record of Rights which illustrated all rights in

[1] The Taxation Enquiry Commission held that both the Zamindars and ryots had proprietary rights, subject to the payment of land revenue.

[2] The report is summarised in Jathar and Beri, *Indian Economics*, Vol. I Seventh edition (1942), Chap. 12.

[3] Sir Theodore Morison (*Industrial Organisation of an Indian Province* deals with U.P., but not with much of its rural economy. A full description is in Misra (*Land Revenue Policy in U.P.*, 1942).

each village. As the settlement was made estate by estate (Mahal), the tenure was called Mahalwari. These settlements were completed between 1833 and 1849, begun by Bird during 1833-43 and completed by Thomason by 1849. Thomason also drew up the first land revenue code of India in his *Directions for Settlement officers*.[1] Unlike the village community of the south which had a headman, these communities had only a panchayat. Hence, the British had to create a headman here called Lambardar. The two-thirds rental rule affected the economic recovery of the region and, in 1855, the demand was limited to half.

In Oudh, the Taluqdars approximated to the position of hereditary landlords, being in some cases descendants of old families. The attempt of the British to pass over them and recognise joint villages here led to resentment of many Taluqdars who joined the Mutiny. After it, Taluqdars, who returned to obedience, were restored and land revenue was settled with them as in Bengal; but, the settlement was only for thirty years. Rights of ryots were also fixed. In 1895, the settlement was reduced to twenty years.

In the Central Provinces, Malguzars, who had been revenue collectors under the Mahrattas, were recognised, and settlement for thirty years were made with them between 1863 and 1867 (time of Lord Lawrence) by Sir Richard Temple who protected the rights of the ryots also.

In Madras, the revenue system was Ryotwari. In some areas like Northern Sarkars and South Tinnevelly etc., there were hereditary chiefs who paid tribute to the Nawab of the Karnatak. The Nawab elsewhere used to collect the revenue direct through the Tahsildars. A headman appointed by the state looked after cultivation in the villages. In some districts like Tanjore, a class called by the Persian term Mirasdars claimed a share in the revenue. The revenue system was in confusion, as the Nawab, owing to financial distress, had assigned to creditors revenues of particular areas.

In 1786, a Board of Revenue was set up for Madras. In 1793, Read and Munro settled the revenue of Barmahal. The basis of the system was that the whole area was divided into fields after a survey, each field was valued at a fixed rate per acre, and final assessment fixed. The occupants dealt directly with the state. The early assessment was heavy. Assessments were made for thirty years. For the consequent misery see Dutt (*Victorian Age*, Chap. V). S. Srinivasa Ayyangar (*Forty Years of Progress in the Madras Presidency*) deals with the miseries of the agriculturists owing to revenue exactions. The settlement was extended to other parts of Madras by 1820. The Madras Board of Revenue wanted to retain the authority of the village community. Munro, supported by the Directors,

[1] He was the first Lieutenant-Governor of the "North West Provinces" (1843-53). Important extracts from his *Directions for Settlement Officers* are given in Dutt's *India in the Victorian Age*, Chap., III. He also fostered irrigation.

insisted on direct dealings with the individual cultivators. The village community declined and, gradually, village officers became government functionaries. Though, later on, Munro, as Governor of Madras, tried to foster the village community, it declined. The Ryotwari pattadars or mirasdars had immunity from eviction so long as they paid the assessment and their holdings were inheritable and transferable. Unlike the Zamindari areas, in the Ryotwari and Mahalwari areas, minute survey was made which made function of the revenue officials more important than in Bengal.

After the annexation of the Punjab, the Board of Three who governed it prepared a record of rights concerning land and settled the revenue with the present communities at rates lower than under the previous Sikh government. Land tax was usually one-fourth of the produce. In the Punjab, the Sikh government had recognized the rights of village communities, and the British found that the joint-village was even more prominent here than in U.P. Hence, a settlement was made for thirty years by which each village collectively paid the land revenue. In 1895, the period was reduced to twenty years.

Elphinstone, appointed Governor of Bombay in 1819, wanted to combine the Ryotwari system with the preservation of the power of the village community. The State should settle the kist with the ryot, but realise it through the village community.[1] He found that the community was one of ryots. The Patel, a hereditary official, holding office by a grant from the State, fixed the revenue, collected it and paid it to the revenue officer (Mamlatdar). Under the old Mahratta rule, the ryots held, by the Mirasi tenure, possession of land subject to the payment of land tax. Malik Ambar, the great minister of Ahmadnagar, had also recognized this Mirasi tenure in the Deccan. Elphinstone's plan would have deprived the community of internal assessment of revenue (its strongest function) and allowed only collection and payment by the Patel. But he left India in 1827. The settlement here was not his work.

The first survey was made by Pringle in 1824-28, but the levy was oppressive. A resurvey was made by Goldsmid and Wingate in 1835. On this basis, settlements were made between 1836 and 1872.[2] These later settlements ignored the village community altogether and settled with the ryots for thirty years. Dr. Choksey (*Economic History of the Bombay Deccan and Karnatak, 1818-68*), reviewing the factors in the half century that followed its annexation, considers that the revenue settlement was high, because the financial interests of the Company were preferred to those of the ryots. Though individual administrators showed sympathy, many blunders were committed, sometimes through ignorance.

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[1] See Dutt, *Economic History of India :* Chap. 20, for Elphinstone's ideas. Also Choksey, *Economic History of Bombay-Deccan and Karnatak (1818-68)* 1947.

[2] See Dutt's remarks in *Economic History of India*, Chap. XXII, and *India in the Victorian Age*, Chap. IV.

In Lord Canning's time, the great famine of 1861 made several experts like Sir Bartle Frere and Sir Richard Temple think that periodical settlements were responsible for the heavy mortality, and acting on this opinion, the British government in 1862 accepted the idea of permanent settlement. Some held that the State should not give up the right to claim revenue from increased profit from agriculture. So, the proposal was repeatedly shelved till, in 1883, Lord Kimberley, the Secretary of State, gave up the scheme. Thus, permanent settlement became limited only to Bengal, parts of Madras and parts of U.P.[1]

Cases of overassessment and too severe rigidity in collection had occurred. It was found impossible to keep up the original demand, so the claim was reduced to half the net rental in 1864. In 1862, Sir Charles Wood, Secretary of State, accepted this principle. In the Ryotwari areas, hereafter no attempt was made to assess according to the gross produce and there was introduced the principle of half the net assets, though the revenue officials were given discretion according to local circumstances. In the landlord areas, in 1881, the old idea of fixing the assessment on a proportion of the rent, as it ought to have been as an ideal, was given up, and the actual rent was taken as the basis. In spite of this the rule of half the rental was often disregarded. Land revenue increased due to increased cultivation and agricultural improvement. But the yield suffered during famine and additional expenditure was needed for famine relief.

The question whether India had been overtaxed had been debated. It is undeniable that the majority of the rural population lived on the margin of subsistence. Criticism that the pressure of taxation had increased the poverty of the people led the government to order Dr. Dutta to conduct an enquiry. Dr. Dutta, basing himself on the average wholesale prices of commodities from 1890 to 1894, held that the rise in prices meant increased demand for Indian raw materials and foodstuffs and, hence, this was a sign of increased prosperity and standard of life. He believed that the rise in prices was sympathetic to the rise in world prices. He also considered that the real wages of agricultural labour had increased since the beginning of the twentieth century. Fallacies in his reasoning are exposed by Chablani in his *Indian Currency and Exchange*. Keatinge (*Agricultural Progress*) believed that real wages were almost unchanged. But Anstey denied that India was overtaxed.[2] She holds that, on the whole, agricultural progress had continued, "though unevenly and at a much retarded rate."

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[1] Baden Powell's *A Short Account of Land Revenue in India* has a map showing the different tenures.

[2] *Economic Development of India*, Chap. XVI. Dr. B.R. Misra (*Indian Provincial Finance 1919-30*) agrees with Anstey. Vakil and Muranjan (*Currency and Prices in India*) blame the currency policy of the government. See also Vakil, *Financial Development in India*. The Central Banking Enquiry Committee estimated the *per capita* income of agriculturists at Rs. 42 in 1928-29.

Lord Curzon's resolution of 1902 on land revenue policy laid down rules for ensuring greater elasticity in assessment and collection.[1] He claimed that the land revenue policy of the government was one of "progressive moderation". He rejected the view that famines had been caused by overassessment and that extension of permanent settlement would be good. Knowles declared that the amount taken was below the half-rental, that it was collected by an honest and efficient agency which, according to her, never existed in the past. Allowances were made for improvements. Suspensions and remissions of revenue were made in bad seasons. But others held that the system was still too rigid to allow of much reduction in hard seasons. Mr. Ruthnaswamy comments on the peculiar power of the executive in India arising from its power to collect the largest single source of revenue by its own power and might. The Joint Parliamentary Committee which considered the Reforms of 1919 laid down that assessment of land revenue should be brought under statutory regulation, instead of being left to executive action. But such laws were passed only in the Punjab, U.P., C.P., and Bombay. The Taxation Enquiry Committee[2] which reported in 1925 pointed out that there was no uniformity or certainty as to either the basis or the rate of assessment and that, unlike the income tax, it was not graduated or progressive. But land revenue is no longer dominant in taxation. While it was 93% of the total revenue in 1883-84, it was only 21% in 1925-26.[3] Since the establishment of provincial autonomy in 1935, settlements have not been held.

Other taxes. The company continued a number of old internal transit duties, which varied from place to place. During the time of Lord William Bentinck, Sir Charles Trevelyan reported on the evils of the system. But action was taken on his report only after 1836. Inland duties were gradually abolished. The old oppressive taxes on occupations was removed in 1853. When the inland duties were abolished, only the duty on salt was retained. So it was a legacy of the past. Warren Hastings set up a state monopoly. The salt duty varied in different parts of India. To prevent smuggling from Indian states, a great inland barrier extended across India. In 1862, the tax was collected as an excise. Still, it remained unequal and differing in different areas. In 1879, Lytton equalised it at Rs. $2\frac{1}{2}$ per maund. By treaty with Indian states to whom annual payments equal to the duty were made, the internal barrier was also removed in 1879. In the twentieth century, the rate was reduced to Re. 1 per maund. In 1916, owing to the monsoon, the expenses of the war, it was raised to Rs. $1\frac{1}{4}$. Extensive failure of the monsoon, the expenses of the Fourth Afghan War and the currency crisis led to deficit budgets for five years from 1919. Lord Reading balanced the budget in 1923 by certifying an increase of the salt tax to Rs. $2\frac{1}{2}$.

[1] It is summarised in Dutt's *India in the Victorian Age*, Book 3, Chap. VII.

[2] The report surveyed the history, characteristics and incidence of all forms of taxation, including land revenue.

[3] It was only about 9% in 1952-53.

But, in the next budget, as a result of the succession of good harvests from 1924, it was reduced to Rs. 1¼ again.

The Company inherited an opium monopoly. The poppy cultivated by the peasants had to be given to the government. There was brisk export trade to China. Anti-opium agitation condemned this as immoral, though a commission in the time of Lord Elgin I deprecated interference with opium trade. Finally, export to China was restricted from 1907 and stopped by 1913. The government, following the Geneva Convention of 1923 regarding export of drugs, limited export only for medical and scientific purposes. Hence, the large revenue drawn from this source disappeared.

Excise duties on liquor came from the past. The very term "Abkari" as well as farming of this revenue prevailed under the Muslim rulers. There was a cotton excise duty which was abolished only in 1926. Excises were imposed on matches and kerosene oil in 1922, on sugar in 1934, on tobacco and vegetable ghee in 1943 and coffee, tea and betel-nuts in 1944. After provincial autonomy granted by the Act of 1935, the Congress ministry in Madras was the first to enact Prohibition law (1938). Dr. Thomas (*Federal Finance*) welcomes prohibition on sentimental and economic ground. But, the real growth of prohibition was only after Independence. The Act of 1935 prevented the centre from taxing motor vehicles and consumption of electricity as excise.

Income tax was introduced in 1860 as a temporary tax. It became permanent in 1878, but applied only to trades. From 1886, it was extended to all non-agricultural income and graduated. During World War I it was supplemented by a super-tax and on excess profits. But these lapsed after the war. Revenue difficulties from 1921 led to a further increase of the tax, as also in the period of depression after 1930. The tax, which was only one per cent of the total revenue in 1883-84, developed into 12 per cent by 1923-24. After the Act of 1935, which allocated income tax to the centre, an amending Act of 1939 allowed the centre to collect an excess profits tax, while disabling the provinces from taxing income under the head of employment taxes which were allocated to the provinces. Further graduation was effected in 1939 by setting up a tax-free slice allowed by increasing rates on successive slabs of income.

Stamp duties were introduced by the British. Since 1922, this revenue has gone to the states.

When India came under the Crown, the import duties were below 5% on British goods, but double on foreign goods. The bulk of exports were also taxed. These duties were collected only for revenue purposes. But expenses due to the Mutiny and loss due to the abolition of internal customs led to a deficit. Hence, in 1859, duties were raised to 10%, luxury goods being taxed at 20%. This caused discontent to British merchants, and British cotton manufacturers also disliked the growth of a cotton industry at Bombay. In 1861,

duties on cotton yarn were reduced to 5% and in 1862 to 3½%. By 1864, the other duties were reduced to 7½% and, in 1875, to 5%. A large number of export duties which had come from the days of the Company were also abolished. From 1882 to 1894, almost all export and import duties were abolished. Under cover of this, Lancashire cotton goods invaded the Indian market. But, increase in military expense and the increasing fall in the exchange value of the rupee led again to the introduction of a general tariff of 5% by Lord Elgin owing to the need for revenue. To satisfy Lancashire, he imposed a countervailing excise duty on Indian cotton goods. In 1896, all duties including the cotton excise was reduced to 3½%.

The customs service was organised in 1905 under the department of commerce and industry. Till World War I, the tariff remained on a simple revenue basis. But, because of their flexibility and fruitfulness, customs duties lent themselves to progressive increase. In 1916, need for money due to war expenses led to increase of the duties to 7½% and further later. They were 10% in 1919, by 1921, 11%, and by 1922, 15% and by 1931, 25%. The cotton excise, which was not increased, was abolished in 1925, in response to Indian agitation. Luxury goods were taxed higher, and some others lower. Thus, we have the introduction of differential duties. After the grant of fiscal autonomy in 1921, the duties also became protective. The majority of the Fiscal Commission of 1921 favoured a policy of discriminating protection, that is, discrimination in choice of industries to be protected and the degree of protection to be given. A tariff board was set up in 1932 and, on its advice, protection given. The Fiscal Commission favoured imperial preference also which was also adopted as a result of the Ottawa Agreement of 1932. Since 1931, surcharges on customs were also levied. The revenue which was only 2% of the total revenue in 1883-84 rose to 31% even by 1925-26. The customs became the chief source of revenue.

The government also enjoyed revenue from several commercial undertakings like forests and posts and telegraphs. Irrigation works paid themselves out. Railways began to yield profit from 1898. From 1924, by convention, they have to make a fixed contribution to the central revenue. Since the rupee as a token coin was current at a value more than the intrinsic value of its metal content, the profits on this mintage were kept in a gold standard reserve from 1906, whose object was to help the maintenance of parity between the rupee and the sterling. Tributes were collected from Indian states as the result of previous obligation to maintain troops. The States Enquiry Committee under Davidson which examined the financial relations of the States with the government of India recommended remission of these contributions which, hence, disappeared.

The Act of 1935 allowed the levy of new taxes on amusement, sales, etc. It also allowed the levy of an estates duty. But action was taken regarding this only after Independence. The

estates duty imposed after Independence (1953) was intended to help States in their development schemes. It was charged according to the value of the property which passes on the death of any person.

The main items of expenditure were heavy defence charges and charges on debt, civil services and commercial services like the railways, posts and telegraphs and irrigation consumed a good part. Till 1878, a part of the annual revenue was kept as a Famine Relief and Insurance Fund ; but, after that year, it became a special fund. From 1881, money from this was spent also on irrigation, railways and reduction of debt.

At the close of the nineteenth century, the debt was £212 millions. Uneasiness at the continuous increase of public debt led to the appointment of the Welby Commission in 1895. Its report (1900) suggested that England should contribute a share of the expenses of the India Office and of the operations in Persia. The British government accepted only the latter recommendation. But the principle was established that productive works like railways and irrigation should be undertaken by loans raised in England and current revenue applied to current expenditure. But, unwise railway policy, the Afghan and Burmese Wars and operations in the Frontier increased the debt further. Still, when World War I began, almost the whole debt was locked in produtive works like railways, irrigation etc. The debt would have been wiped out had it not been for the expenses of the war. Further, after the end of the 19th century, England ceased to burden India with substantial payments which were due from England alone in the external sphere.

The total debt in 1934 was Rs. 1,192 crores of rupees, the bulk of which was productive. By 1939-40, the debt was Rs. 1,195 crores. Of this, Rs. 463 crores were in sterling and the rest in rupees. The vast purchases of the government for war purposes on behalf of England and her allies led to its issuing paper currency in India against sterling received in England. Thus were accumulated "sterling balances" which were used to repatriate the sterling debt, and also the railway stock in England. Thus, as a result of World War II, India, from being a debtor, became a creditor.

Under the present constitution, the centre can levy a number of taxes covering a wide range including taxes on income other than agricultural income, customs and excise duties, corporation taxes, estate duty and succession duty, terminal taxes on goods and passengers carried by railway, sea or air, taxes on railway fares and freights, taxes on transactions in shares and future markets, and taxes on advertisements in newspapers. The States can levy numerous taxes including land revenue, taxes on agricultural income, estate and succession duties covering agricultural property, taxes on lands and buildings, excise duties, sales tax, taxes on the use of electricity, taxes on vehicles, taxes on animals, taxes on professions and trades, taxes on luxuries and amusements and capitation taxes.

Several taxes levied and collected by the centre go wholly or partially to the States in accordance with certain principles of distribution formulated by law, *e.g.* estate and succession duties go wholly to the States, while a percentage of the income tax goes to the States. Grants-in-aid can also be given to the States.

As a result of the partition, India and Pakistan entered into a financial agreement by which Pakistan got Rs. 75 crores out of the Rs. 400 crores of the cash balances, but only 17½% of the total debt. The whole debt was to be taken over by India and Pakistan has to pay back her share of it to India by instalments.

The revenue of the Government of India at that time was roughly Rs. 250 crores per year and the States had a similar revenue. So, the total revenue was Rs. 500 crores. Soon after the partition in 1947, the Niemyer Award was modified in the distribution of the provincial share of the income tax. In 1950, it was further modified by the Deshmukh Award to suit the needs of the provinces. According to the constitution, a Finance Commission had to be appointed. This Commission headed by Neogy reported in 1953. It recommended increased grants to States from income tax and allocation to States of part of the net proceeds of Union excise duties on tobacco, matches and vegetable products and also grants-in-aid to certain States for their needs like expansion of primary education.

The first budget after Independence (1947-48) was the tenth of the deficit budgets. While the revenue was Rs. 230·52 crores, expenditure was Rs. 257·37 crores, largely owing to increase in expenditure on the rehabilitation of refugees and on nation-building activities. There was some improvement afterwards. The main changes from 1947 to the present in the field of revenue are declining customs duties, abolition of salt duty, imposition of excises on tea and coffee, higher duties on luxuries like motor cars and precious stones and increase in postal rates. In expenditure, a large part of the revenue goes for defence, interest charges on public debt and pensions and for rehabilitation of refugees and the rest for the expenditure of government. In 1953-54, the total taxation of the centre was Rs. 347 crores and the total taxation of the States was Rs. 324 crores. The public debt was in 1947, Rs. 2,200 crores; but a considerable part of it was invested in productive schemes. A Taxation Enquiry Commission was appointed in 1953 to consider the whole problem.[1]

Having in mind the development plans before the country, the commission emphasises the need for the largest practicable restraint on consumption by all classes. The commission has noted that commodity taxes and taxes falling on domestic consumption have come to occupy a key position in the fiscal system (being about 45% of the total revenue). Regarding central revenues, income tax has expanded

[1] Its report (in three vols.) was published in 1955. The Commission, presided over by Dr. Matthai, has made an exhaustive survey of the central, state and local taxes.

considerably and an estate duty has been recently instituted, though customs duties and central excises[1] are still important. Regarding the revenues of the States, land revenue has become much less important and sales taxes have become the main source of revenue. Problem of co-ordination of tax policy between the centre and the States has become important. State and local taxes diverge widely in their rates in different parts of the country. The commission suggests increase in excise taxes, moderate land revenue surcharges, development of non tax revenues (as from public undertakings) and an agricultural income tax. The commission notes that sharing in the proceeds of the central taxes by the States and the policy of substantial grants by the centre to the States for general or specific purposes have imparted a greater measure of elasticity to the State revenues than before World War II. An All-India Taxation Council under Article 263 of the constitution is suggested to secure co-ordination of tax policies, tax legislation, and tax administration as between the states themselves and between the centre and the states. The commission estimates that the largest single source of revenue in Part A and Part B States comes from consumption taxes and duties, while Part C states depend on land revenue, state excises and central subventions.

The budget of 1955 bears the impress of the influence of this report. Increasing tempo of government expenditure on development plans showed itself in continuing deficits and a part of it was covered by increase of customs duties on certain articles, certain changes in the income tax and levy of new excises on articles like electric goods, paper, paints and superfine fabrics.

Laissez faire in England prevented the British Government from taking any steps to advance economic development by state effort for a very long time. India has been mainly an agricultural country and the village, the unit for agriculture, has been the really important institution. According to the census of 1931, 66·4% of the population was engaged in agriculture as contrasted with 21% similarly employed in England. The census of 1951 indicates that of the total of 3,566 lakhs of the population of India, 2,491 lakhs *i.e.*, 69·8% still belong to agriculture. The condition of the agricultural population was miserable. Prof. Tawney's description of rural population in parts of China in his *Land and Labour in China* has often been compared to Indian conditions : "A man standing permanently up to the neck in water, so that even a ripple is sufficient to drown him." A bad harvest led to terrible famines. Fragmentation of holdings and partition of land hampered agricultural progress. Dr. Harold Mann, who surveyed villages in the Deccan areas of Bombay state, held that "fragmentation of holdings was as serious an evil as excessive subdivision," (that is, the plots being scattered). In his *Land and Labour in a Deccan Village*, he shows

[1] There is an excise duty on cloth from 1949 and on cement, soap and footwear from 1945.

that in a particular village the average size of the holding decreased from 40 acres in 1771 to seven acres in 1915. Stanley Jevons observed the same phenomenon in the United Provinces and suggested a policy of encouraging compact blocks as done by the Enclosure Acts of England. Dr. Slater noted the same condition in Madras, and pointed out that villagers were unwilling to co-operate for improvement. The increase of population also led to scramble for land by the peasants which increased the rents they had to pay to the landlords. All these plunged the ryot in chronic poverty and drove him to debt.

The Company was interested only in land revenue. Even the attention it devoted to irrigation was not much. It restored the Jumna Canals and the Coleroon Anicut and built the Godaveri Anicut.[1] That was all. Kaye remarks, "The amount of money expended on public works by the Company was miserably small in comparison with the immense sums lavished on unproductive wars."

A slight advance took place after India came under the Crown. Lord Lawrence laid down the principle that productive public works should be constructed out of loans. A science of famine relief was developed. Before Independence, famine works meant only stone-breaking and road making. Now, it includes repair of minor irrigation works, clearing of silt, deepening tanks and wells and digging wells. Attention was also given to diseases which followed famines. Joad (*Story of Indian Civilisation*) pointed out that most of these are typical diseases of malnutrition and bad sanitation like cholera, malaria, rickets, tuberculosis etc. The Woodhead Report which followed the Bengal famine of 1943 remarked that the duty of the government should be not merely to prevent death, but it is also responsible for providing food for all and creating a healthy and vigorous population.

In Lord Lansdowne's time, the secretary of state sent out Dr. Voelcker to advise on the application of agricultural chemistry to Indian conditions. Scientific agriculture developed from then, helped by the science of genetics which developed rapidly by the twentieth century. Development of communications and establishment of peace made the old harvest gluts of the locality disappear and led to uniformity of prices. The peasant was no longer a small self-contained ryot. In many places, he became a contributor to the needs of the world, particularly in commercial crops like sugarcane, cotton etc.

Development of a settled judicial procedure helped creditors to foreclose land, and many peasants who had borrowed money lost their lands to the creditors. Some attempts were made to help them by laws like the Central Provinces Tenancy Act restricting the right of transfer of land (1898) and the Punjab Land Alienation Act of 1900 which forbade transfer to non-agricultural

[1] *Imperial Gazetteer*, Vol. 3, Chap. VI.

classes. The British government also continued the old policy of giving "taqavi" loans by laws like the Land Improvement Act of 1883 and the Agriculturists' Loan Act of 1884. The first important step in the co-operative movement was taken in Madras where Sir Frederick Nicholson published his report in 1895. It was left to Lord Curzon to drive the matter further. The first Co-operative Societies Act of 1904 constituted societies on the Raiffeisen model. The Act was revised in 1912 in the light of Indian experience. But the movement was largely under official control. In co-operative credit for rural agriculture, progress was unequal, Madras and Bombay being the most advanced. The Central Banking Enquiry Committee of 1931 held that the total indebtedness of India was Rs. 1,500 crores out of which Rs. 900 crores were owed by to the rural classes. This Committee and the Civil Justice Committee recommended rural insolvency legislation. After the introduction of provincial autonomy in 1935, several provinces like Madras legislated regarding the debt of agriculturists. A law in Bihar registered money-lenders and forced them to furnish periodical accounts to their debtors. There was a unique experiment in Baroda in 1944 in which the state purchased lands which had passed to money-lenders and worked them in association with the original cultivators. In spite of all these efforts, the problem still remained difficult.[1]

The Irrigation Commission of 1901-03[2] appointed by Lord Curzon survived the whole problem and insisted on an extension of irrigation as a protection against famines. Though a good deal of progress was made, many river valleys were still neglected.

Moreland (*India at the Death of Akbar*) estimated the population at the end of the 16th century as approximately 100 millions. In 1811, when the correct census was taken, it was 254 millions. Since then, the population has been steadily increasing so much so that Prof. Gyan Chand in his *India's Teeming Millions* estimated that by 1948 the population would reach 425 millions. The partition of India, which he did not anticipate, has reduced our population to about 360 millions. Scholars have debated on its effect on food supply. Dr. Thomas pointed out that between 1900 and 1930 population increased only by 19 per cent but, food production increased by 30 per cent and thought that the rise of population was not steady but proceeded by jerks. On the other hand, Wattal and Gyan Chand hold that population increased

[1] The first Famine Commission pointed out that the bulk of the people directly depended on agriculture and recommended development of rural industries to help them in periods of distress. But the Agricultural Commission concluded that the possibilities of improving their lot in this way were very limited. A good description of the methods of famine relief is in Knowles—*Economic Development of Overseas Empire*, Vol. 1. *The Imperial Gazetteer*, Vol. 3. Chap. X describes the general nature of famines. See also *Cambridge History of India* Vol. 6, Chap. 17.

[2] *Imperial Gazetteer*, Vol. 3 Chap. VI. Dutt—*India in the Victorian Age*, Book 3, Chap. X.

more than food production. The Agriculture Commission believed that the soil had not been exhausted and that the problem raised by the census was not so much that of food as of employment. Though after Independence, the food resources of the country have been increased owing to the various river valley projects, the economic problem due to increase in population is still before us and has to be solved.[1]

The same spirit of *laissez faire* affected the growth of industry. Dr. Buchanan who travelled in South India in 1800 and part of North India in 1807 described the position of industries in India as showing decline.[2] The decline of Indian industry was due not only to the indifference of the government but also to the competition of factory goods coming from England, tariff restrictions[3] and the misdirection of Indian railways. The plan of the railways had at first followed the lines laid down by Dalhousie connecting the interior with ports, thus helping the import of foreign machine-made goods which successfully competed with indigenous products. Thus railways also helped to reduce India to the position of exporter of raw materials and importer of manufactured goods.

Greater state activity with regard to industry is noticeable only after 1895. By now, England itself had become used to state regulation. Nationalist agitation increased in India and began to insist on the use of Swadesi goods. Lord Curzon favoured some energetic steps to stimulate industry. But, even then, vested interests in England and official indifference hampered efforts. Ranade was unjustifiably optimistic about development of industries in his *Essays on Indian Economics* published in 1888. The Indian Industrial Commission headed by Sir Thomas Holland was appointed in 1916 to consider about the position. In its report of 1918, it traced the Indian industrial organization[4] and favoured definite state participation in industrial development. Though its recommendations were accepted, these were not satisfactorily carried out. Departments of Industries were set up in all the provinces as recommended by the commission. A Stores Purchase Committee appointed in 1921, in accordance with the report of the commission, recommended the establishment of an Indian Stores Department. But progress was not satisfactory. Powerful statesmen like Lord Morley had been against state enterprise.

During World War I, the Indian Munitions Board set up in 1917 marked the first step to develop Indian resources for the war. Another important landmark was the report of the Fiscal Commission of 1921 which recommended a policy of discriminating protection.

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[1] *The Eastern Economist* (Annual Number, 1948) discusses all aspects of Indian economy in 1948.

[2] See Dutt, *Economic History of India*, Chap. XIV. Dr. Buchanan's remarks on agriculture are in Ch. XII.

[3] Dutt, *India in the Victorian Age*, Ch 7.

[4] See Anstey, *Economic Development of India* (Appendix).

In accordance with its report, the government set up a Tariff Board in 1923. The Tariff Board recommended protection to the steel industry in 1924. Even then, production was not sufficient for the needs of India. In 1930, protection was extended to cotton goods. Cotton industry, which became the largest in the country, developed in spite of competition from Lancashire at first and Japan later. In 1931, protection was given to the sugar industry which hence was able to become the second largest industry of the country. Protection was also given to certain types of paper, matches and heavy chemicals. At the same time, as a result of agreements made with Britain and the other Dominions, imperial preference was extended to certain articles.

The census of 1911 listed only 7,113 factories[1] and, even of these, only 4,569 used mechanical power. When the government began to attend to Indian interests after World War I, it was mainly due to force of circumstances, and not to deliberate policy. But things changed afterwards. World War II hastened further developments in industry owing to the needs of the war. A Department of supply was set up, corresponding to the Munitions Board of the previous war. A Council of Industrial and Scientific Research was set up in 1940. The prediction of the Industrial Commission that, though Indian labour was inefficient, it was capable of improvement, proved correct.[2]

Labour movement began only after World War I, but was not well organized. The first trade union was founded at Madras in 1918. But legislation to protect workers had begun long before.

Factory Acts date from the time of Ripon. Factory legislation was at first due to the self-interest of Lancashire and later the desire to avoid in India the sufferings due to industrialization which occurred in the West. The early Factory Acts were not very effective. Some improvement began only after the Whitley Commission on Labour[3] which was appointed in 1929 and reported in 1931 about deplorable conditions. The Factory Act of 1934 limited weekly hours of labour to 54 per week and daily hours to ten in perennial factories, limited child labour to five hours per day and imposed conditions regarding the health and safety of workers. The Factory Act of 1940 extended its scope to establishments employing ten or more workers and provided for weekly holidays for commercial establishments like shops. Another Factory Act of 1946 reduced weekly hours from 54 to 48 in perennial factories and from 60 to 50 in seasonal factories. In 1923, the Workmen's Compensation Act, which was amended in 1933, provided for compensation in case of injury or death arising from employment. A law of 1940 provided for mater-

[1] Knowles compares the industries of the period 1914-30 to framework knitters in England between 1830 and 1840.

[2] The question is discussed by Padmanabha Pillai, *Economic Conditions in India*.

[3] See analysis of the report in *Modern Review* (Jan. and May, 1932).

nity benefits for women working in coal-mines. The Payment of Wages Act of 1936 regulated periods for payment of wages.

The Trade Unions Act of 1926 registered and protected trade unions for the first time. The Trade Disputes Act of 1929 provided for Courts of Enquiry and Conciliation, though there was to be no compulsory arbitration. In 1942, a conference of representatives of the government, employers and labour agreed on a permanent tripartite organization to discuss issues between capital and labour. Plantation labour was given protection only after 1926.

The earliest policy adopted regarding railways[1] was to encourage private enterprise. The companies were given a guarantee of 5% on capital. The state received a share of the profits and had a right to purchase the lines after a term of years. This policy proved wasteful and Mayo began in 1869 building of railway lines by the state with capital which was borrowed. It was he who introduced the standard gauge of 5′ 6″ on main lines and metre guage for subsidiary lines. This procedure was found too slow. So, after 1860 a return was made to use private enterprise but on terms more favourable to the state than before.

Still, while the existence of different companies prevented the adoption of a common policy, the extensive supervisory powers of the government hindered smooth working. The system was stigmatised as combining the defects of private enterprise and nationalization. By 1921, the trunk lines were almost completed. In 1925, the East India and the Great Indian Peninsular Railways came to the state and, before 1947, all important lines had come under the state.[2]

The Railway Board was formed in 1905 by Lord Curzon. Railways were till now under the P.W.D. In 1922, a Chief Commissioner of Railways was appointed. In 1926 a Rates Advisory Committee was constituted. The Acworth Committee of 1921 had recommended not merely the termination of contracts of companies as they fell due but also the separation of the railway budget from the central budget. Accordingly, a convention began in 1924 by which railway finance was separate from general finance so as to secure flexibility in the administration of railway finance and allow railways to pursue long range policies of development.

Railways unified India. Before the railways, it took six months to go from Calcutta to Peshawar. Spread of law and order was helped and mobility was promoted. Local isolation broke down. Till now, prices fluctuated from place to place and they now tended to be uniform. Famines no longer meant scarcity of food. Valuable

[1] *Imperial Gazetteer*, Vol. 3, Chap. VII, studies transport. Knowles summarises the effects of railways. She gives a summary of the report of the Acworth Committee in Chap. VI, *Economic Development of Overseas Empire*, Vol. 1.

[2] For early defects, see Dutt, *India in the Victorian Age*, Chap. IX. Anstey discusses the question of nationalization in her *Economic Development of India*, Chap. VI.

regions like areas of coal-mines were opened. Social barriers were broken down, and railways helped to civilise backward tribes. Growth of towns like Kanpur and Karachi were helped. Markets were extended. India was gradually changed into an industrial and commercial country.

The Indian Mercantile Marine Committee of 1923 recommended reservation of coastal trade for Indian shipping, promotion of an Indian mercantile marine and the establishment of a training ship for creating an Indian sea personnel. Only the last recommendation was implemented by the establishment or a training ship called the Dufferin. The government was not interested in carrying out the other recommendations.

Civil aviation is important in India which is a country of long distances. Lord Willingdon was the first "flying" viceroy. In 1927-28, civil aviation was encouraged by the government and the first internal air service began between Karachi and Delhi in 1929 ; but not much progress was made. Trunk telephones, air mail and introduction of a beam system of wireless in 1926 helped internal trade. Trade advanced greatly. Though even by 1935 the preponderance in exports were in raw materials, there was some increase of export of manufactured goods like textiles. Towns like Karachi were created by export trade, while some towns like Jamshedpur were created by industry.

In the time of Lord Irwin, the Banking Enquiry Committee of 1921 emphasised the need to improve banking facilities.[1] Though a number of banks existed, the only important one was the Imperial Bank of India. There was no state bank. In 1934, the Reserve Bank was set up to assume responsibility for the management of currency and exchange, till now looked after by the government.

The tempo of economic development increased only after Independence. A Five-Year Plan was begun in 1951-52. This embodied the resolve of the people to undertake a maximum effort for improvement in the standard of living as a step towards the realisation of the ultimate aim of a welfare state. A Planning Commission was set up which constantly reviews the plan and makes adjustments to suit changes in it from time to time. The main emphasis in this first Five-Year Plan was on agriculture. Out of the target set out in the plan for production of crops, the target in respect of food-grains and oil-seeds was achieved by 1954 and in the production of cotton almost achieved. Abolition of zamindaris and intermediaries has been carried out peacefully and attempts are being made to fix ceilings on landholdings. Regarding rural debt, the Rural Credit Survey Committee of the Reserve Bank recommended the establishment of a State Bank with branches all over the country to aid co-operative credit. On the basis of this, the government has decided to nationalise the Imperial Bank (which will be called the State Bank of India)

[1] Review of this is in the *Modern Review*, Oct. 1931.

and make it the vehicle of co-operative credit. With regard to rural welfare, a specific place was given for the self-help of the people in National Extension Service and Community Projects. While community projects aim at intense and comprehensive development of selected blocks of villages, national extension service concentrates on bringing to the agriculturist results of recent research and instilling the need for co-operation. The aim is to develop agriculture, irrigation, veterinary aid, fisheries, roads, housing, cottage industries, education and health. The villagers themselves are encouraged to work on a co-ordinated plan. Work has been done in malaria control, land reclamation, minor irrigation works and building new roads and bridges. Legislation has been passed in some states to check fragmentation of holdings and also consolidate holdings. Tenancy reforms have been carried out in good measure.

Community projects form a great scheme of self-help with state aid and include programmes of building wells, roads, tanks and new schools, reclamation of wastes, fostering new agricultural methods, new housing schemes, and improvement of sanitation. These works also provide employment.

Another important part of the plan deals with the great river valley projects. Under this plan, 110 projects have been completed and others begun.

It must be remembered that India received proportionately more population than the territory of the previous undivided India. Her population is increasing by approximately four million people every year. Hence the great importance of the various river valley projects on which the government is engaged. These projects are multi-purpose ones as the aim is not only to increase food supply and develop agriculture and irrigation but also to produce electric power and promote employment by starting subsidiary industries.

The expenditure on the plan was originally fixed as Rs. 2,069 crores. But this amount has been raised to Rs. 2,250 crores with the object of providing increased employment opportunities. The plan is financed by additional taxation like increase of irrigation taxes and increased borrowings, both internal and external. Financial help has come from the Colombo Plan sponsored by 14 countries (India, Canada, Britain, Australia, New Zealand, Pakistan, Ceylon, U.S.A., Burma, Indonesia, Cambodia, Laos, Viet Nam and Nepal) to fight poverty and starvation in S.-E. Asia. This Colombo Plan is a six-year scheme. Loans have also been taken from the World Bank and the United States. Technical help through services of experts have been provided from the Commonwealth countries under the Colombo Plan, from U.S.A., under the Point Four Programme and from agencies of the United Nations. The plan is a joint mutual enterprise in which the centre and the states are partners.

Though the population of India mainly depends even now on agriculture, India has developed into one of the seven greatest

industrial nations of the world. In 1948, the Government of India announced their industrial policy. Industries were divided into four categories : (1) Key industries like railways, manufacture of arms and ammunition, atomic energy etc. These would be the sole monopoly of the state. (2) Industries of national importance like coal, iron and steel, mineral oil, aircraft manufacture, ship-building, manufacture of wireless, telephone and telegraphs. In this field, new enterprises will be started by the state. But existing concerns would be allowed to continue, till the position is reviewed in 1958. (3) Basic industries like salt, electrical engineering, manufacture of automobiles and heavy chemicals. These would be regulated and controlled by the state. (4) The rest is left to private enterprise. But, the state retains the right to interfere if there is anything unsatisfactory. In 1955, Prime Minister Nehru announced that the goal of the government is a socialist pattern of society and that the government would be dominant in key industries. The government did not, however, take a rigid view regarding its policy. For instance, oil refineries were set up in 1953 with the help of foreign companies so that we could hereafter import only crude oil, though mineral oil is listed as belonging to the field of public sector.

The Tariff Board has been renamed the Tariff Commission from 1952. Unlike the previous Tariff Board, it is given more discretion. While the previous board could recommend protection for only three years, the Tariff Commission is not fettered by any such restriction. It can consider claims for protection even from industries which had not yet been started and which need protection. An important part of the Five-Year Plan deals with industry.

Under this policy, the industrial development of India has been great. There has been an increase of production in the older industries like cotton textiles, sugar and iron and steel. Other industries which have developed in importance are manufacture of paints, chemicals and dyes, automobiles, bicycles, ships, matches, cement, paper, electrical goods, locomotives, railway coaches and waggons. India, instead of being an exporter of industrial raw materials like cotton, jute, oilseeds and tobacco, has become an importer of industrial raw materials and exporter of manufactured goods. New industries which have developed after Independence are manufacture of automobiles, wireless goods, diesel engines, textile machinery, electric goods, cables and wires, machine tools, locomotives, stainless steel goods and bicycles.

Eleven research institutes have been set up. These are the National Chemical Laboratory, Poona ; the National Physical Laboratory, New Delhi ; the Fuel Research Institute, Digwadih ; the Central Glass and Ceramics Research Institute, Calcutta ; the National Metallurgical Laboratory, Jamshedpur ; the Central Food Technological Research Institute, Mysore ; the Central Drug Research Institute, Lucknow ; the Central Leather Research Institute, Madras ; the Central Building Research Institute, Roorkee ; the Central Road

Research Institute, New Delhi ; and the Central Electro-chemical Research Institute, Karaikudi. The following state-managed factories were also set up : The Sindri Fertiliser Factory, the Chittaranjan Locomotive Factory, the Machine Tool Factory at Jalahalli near Bangalore, the Telephone Cable Factory at Mihijan (West Bengal), the Penicillin Factory in the Bombay State, the Indian Rare Earths Limited, Travancore, the Integral Coach Factory, Perambur and the Hindustan Aircraft Factory at Bangalore. Establishment of additional steel plants and fertilizer factories are contemplated. Various states also have embarked on state enterprises. Thus Madras State has nationalised electric supply and motor transport in the city of Madras. In the Bombay State, public and private enterprise is associated in motor transport.

Definite schemes have been prepared for the financing of industry. The National Industrial Development Corporation was set up by government in 1954 for establishing industries which would not be normally attractive to private enterprise. Its board of directors is nominated by the government from officials and non-officials, and it is controlled by the government. The Indian Industrial Credit Investment Corporation was set up in 1955 to help the private sector by loans. This has a board of directors, one from the government of India, one from the World Bank, three representing shareholders from the United States and the United Kingdom, and the rest chosen by Indian capitalists. This will be a private body working with the sympathy and help of the government. In 1954, four regional institutes of technology were set up for helping small-scale industries with instruction in improved methods.

As a result of partition, India lost large chunks of railways ; but one advantage was that all the railways owned by the companies had been acquired by the state during the War. All the 21 railways were regrouped into six main systems. The Southern Railway was brought into existence in 1951 and the Central and Western Railways in the same year. The North, North-East and Eastern Railways were brought into existence in 1952. The longest of all is the Southern Railway. Break of gauge is an undoubted handicap. Note that in U.S.A. there were six major gauges and a number of minor gauges. But by 1886 all were converted into a standard gauge. A similar attempt at uniformity is impossible in India owing to financial reasons. India has tried to be self-sufficient with regard to railway equipment by the starting of the Locomotive Factory at Chittaranjan in 1950 and coach building at the Hindustan Aircraft Factory at Bangalore and the Integral Coach Factory at Perambur.

In 1941 a private ship-building yard was set up at Vishakapatnam by the Scindia Steam Navigation Company which grew up in 1919 ; but there was no proper encouragement. Government sympathy came only after Independence ; but, owing to the inability of the company to find the finance necessary for development, the

government had to take over the ship-building yard in 1948 and make it a public corporation under the name of the Hindustan Shipyards. Great attention has also been bestowed on the development of aviation. A number of aircraft companies developed after Independence and air transport has been extended to foreign lands. All these have now been taken over by the state. A systematic planning of roads has laid down a programme of National Highways, Provincial Highways, District Roads and Village Roads.

After Independence, India has entered into bilateral trade agreements[1] with several countries, for mutually advantageous trade. There has been a marked export of textiles, jute goods and oils. Till World War II, Britain was the largest share in our trade. This continues ; but our trade has also increased with the United States and other Asian lands.

Tremendous advance has been made in labour welfare. The Factory Act of 1948 laid down standards of building, health and safety in factories and prohibited employment of persons below the age of 14. A Minimum Wages Act regulated wages in unorganized employments like agriculture and plantations. The law regarding Trade Unions was consolidated in 1950. The Industrial Disputes Act of 1947 provided for the setting up of joint committees of labour and employers for holding tripartite discussions with the government regarding industrial disputes. This procedure was superseded by a procedure to refer such disputes to appellate tribunals set up under the Labour Relations Act. A first step in social security was taken by the Employees' State Insurance Act of 1948 which is the first of its kind in South East Asia. The Act sets up a corporation which, in association with the Government of the States, is organising a satisfactory medical service for insured workers in perennial factories. It also administers a limited programme of benefits of sickness, injury, disablement and maternity. There will be cash benefits in such cases on the basis of contributions. There will be payments for employment injury covering total or partial disablement, but this would not be on the basis of contribution. The scheme is being slowly extended to different parts of the country.

The first Five-Year Plan laid main emphasis on the construction and development of big irrigation works, electricity schemes and agricultural improvement. A second Five-Year Plan is to follow whose main emphasis will be on heavy industry and development of transport facilities. It envisages an investment of about Rs. 6,300 crores, and contemplates efficient co-operation of the public and private sectors (investment of about Rs. 4,300 crores in the public sector and about Rs. 2,000 crores in the private sector).

[1] Dr. B. V. Naidu (*Indian Trade*) holds that bilateralism has not been much useful to us and we should have trade agreements on a multilateral basis.

APPENDIX A

Before Independence, there were nine provinces under governors and five provinces under chief commissioners. The Indian states, numbering over 500, had an area of about two-thirds of British India, though their total population was only about a third. When Pakistan was formed, it comprised 366,000 sq. miles and a population of 75 millions. The table given below shows the area and population of the units in the Indian Union now.

Name	*Area in sq. miles*	*Population*
Part A States		
Andhra	63,608	20,507,800
Assam	85,012	9,043,700
Bihar	70,330	40,225,950
Bombay	111,434	35,956,150
Madhya Pradesh	130,272	21,247,530
Madras	60,362	35,734,490
Orissa	60,136	14,645,950
Punjab	37,378	12,641,200
Uttar Pradesh	113,409	63,215,740
West Bengal	30,775	24,810,300
Part B States		
Hyderabad	82,168	18,655,100
Madhya Bharat	46,478	7,954,150
Mysore	33,309	9,848,650
Pepsu	10,078	3,493,680
Rajasthan	130,207	15,290,800
Saurashtra	21,451	4,137,360
Travancore-Cochin	9,144	9,280,420
Jammu and Kashmir	92,780	4,021,610
		According to the census of 1941.
Part C State		
Ajmer	2,417	693,370
Bhopal	6,878	836,470
Coorg	1,586	229,400
Himachal Pradesh	10,451	983,370
Delhi	578	1,744,070
Kutch	16,724	567,600
Manipur	8,628	577,635
Tripura	4,032	639,020
Vindhya Pradesh	23,603	3,574,690
Part D States		
The Andamans and Nicobars	3,215	30,970
The Indian Union as a whole	1,269,640	356,829,490

APPENDIX B

Composition of the State Legislatures as at present

State	*Total No. of members*	*Representatives of Scheduled Castes and Tribes*	*Nominated Anglo-Indian members*
Andhra	140	22 (19+3)	Nil
Assam	108	31 (5+26)	1
Bihar	330	79 (44+35)	1
Do. (Upper House)	72		
Bombay	315	56 (27+29)	1
Do. (Upper House)	72		
Madhya Pradesh	232	59 (32+27)	1
Madras	230	44 (43+1)	1
Do. (Upper House)	51		
Orissa	140	49 (21+28)	Nil
Punjab	126	49 (21+28)	1
Do (Upper House)	40		
Uttar Pradesh	430	83 (83+Nil)	1
Do. (Upper House)	72		
West Bengal	238	52 (40+12)	2
Do. (Upper House)	40		
Hyderabad	175	33 (31+2)	Nil
Madhya Bharat	99	29 (17+12)	Nil
Mysore	104	21 (21+Nil)	Nil
Do. (Upper House)	40		
Pepsu	60	10 (10+Nil)	Nil
Rajasthan	160	21 (16+5)	Nil
Saurashtra	60	5 (4+1)	Nil
Travancore-Cochin	108	11 (11+Nil)	1
Ajmer	30	6 (6+Nil)	Nil
Bhopal	30	7 (5+2)	Nil
Coorg	24	6 (3+3)	Nil
Delhi	48	6 (6+Nil)	Nil
Himachal Pradesh	36	8 (8+Nil)	Nil
Vindhya Pradesh	60	12 (6+6)	Nil
Electoral Colleges—			
Kutch	30	Nil	Nil
Manipur	30	Nil	Nil
Tripura	30	Nil	Nil

These figures are likely to be altered as a result of the work of the Delimitation Commission of 1952, before the next general elections scheduled to take place in 1957.

APPENDIX C

The Allocation of seats in the Parliament according to the Report of the Delimitation Commission

Part A States

Lok Sabha		*Rajya Sabha*
28	1. Andhra	12
12	2. Assam	6
55	3. Bihar	21
49	4. Bombay	17
29	5. Madhya Pradesh	12
49	6. Madras	18
20	7. Orissa	9
17	8. Punjab	8
86	9. Uttar Pradesh	31
34	10. West Bengal	14
379		148

Part B States

Lok Sabha		*Rajya Sabha*
25	1. Hyderabad	11
6	2. Jammu and Kashmir	4
11	3. Madhya Bharat	6
13	4. Mysore	6
5	5. Patiala and East Punjab States' Union	3
21	6. Rajasthan	9
6	7. Saurashtra	4
13	8. Travancore-Cochin	6
100		49

Part C States

Lok Sabha		*Rajya Sabha*	
1	1. Ajmer	1	The seat is held in rotation by the two States.
1	2. Coorg		
2	3 Bhopal	1	
3	4. Himachal Pradesh	1	
3	5. Delhi	1	
2	6. Kutch	1	
2	7. Manipur	1	The seat is held in rotation by the two States and is filled by nomination.
2	8. Tripura		

5	9. Vindhya Pradesh	4
21		10
Total number. 500[1]	Total nmber	207
	Nominated	12
	Total	219

APPENDIX D

Composition of the State Legislative Councils according to the Report of the Delimitation Commission

Name of the State	Total No. of seats	Elected Seats [Article 171 (3)]				Nominated seats
		Under Sub-clause (*a*) by local Authorities	Under Sub-clause (*b*) by Registered Graduates	Under Sub-clause (*c*) by Registered teachers	Under Sub-clause (*d*) by the Legislative Assembly	Under Sub-clause (*e*) Literature, Science, Art, etc.
Bihar	72	24	6	6	24	12
Bombay	72	24	6	6	24	12
Madras	51	14	6	4	18	9
Punjab	40	13	3	3	13	8
Uttar Pradesh	72	24	6	6	24	12
West Bengal	40	13	3	3	13	8
Mysore	40	13	3	3	13	8

[1] Of these, 66 will represent Scheduled Castes and 27, Scheduled Tribes.

APPENDIX E

State Legislative Assemblies (Future Strength as fixed by the Delimitation Commission)

Name of State	*Total number of seats*	*Number of seats reserved for Scheduled Castes*	*Scheduled Tribes*
Part A States :			
1. Andhra ...	196	26	5
2. Assam ...	108[1]	5	9
3. Bihar ...	330	41	33
4. Bombay ...	294	25	27
5. Madhya Pradesh ...	232	32	27
6. Madras ...	245	39	1
7. Orissa ...	140	25	28
8. Punjab ...	119	22	Nil
9. Uttar Pradesh ...	430	78	Nil
10. West Bengal ...	238	45	11
Part B States :			
1. Hyderabad[2] ...	175	...	3
2. Madhya Bharat ...	99	16	13
3. Mysore ...	117	21	Nil
4. Patiala and East Punjab States' Union ...	60	12	Nil
5. Rajasthan ...	168	17	3
6. Saurashtra[2] ...	60	...	1
7. Travancore-Cochin ...	117	11	Nil
Part C States :			
Only the composition of the Coorg Assembly is decided so far.			
Coorg ...	24	3	3

[1] Out of the 108 seats assigned to the Legislative Assembly of the State of Assam, 18 seats are for the autonomous districts of that State as shown below :

United Khasi and Jaintia Hills District ...	5
Garo Hills District	4
Lushai Hills District	3
Naga Hills District	3
North Cachar Hills	1
Mikir Hills	2

[2] The number of seats to be reserved in the Legislative Assemblies of Hyderabad and of Saurashtra for the Scheduled Castes have not yet been decided.

The representation of Anglo-Indians by nomination may be continued as at present.

CHAPTER III

OTHER COMMONWEALTH GOVERNMENTS

CANADA

CANADA was first settled in by the French under de Champlain who founded the city of Quebec. This expanded into the colony of Canada. The struggle between the French and the English for possession was stubborn, and the treaty of Paris of 1763 marked the final cession of Canada to Great Britain. The French Canadians remained loyal to the English during the American War, because the Quebec Act of 1763 allowed them the free exercise of the Catholic faith and the civil law was also to be French Canadian. After the American War, many loyalists came over, and new provinces were formed. Pitt's Act of 1791 divided Canada into Upper and Lower Canada and gave each a representative assembly but an irresponsible executive. There was inevitable friction. In Lower Canada, there was also jealousy between the French and the English. This unsatisfactory position resulted in rebellions in both parts in 1837. Later, Lord Durham was sent over to report on the situation, and his report led to the reunion of the two provinces in 1840 and the granting of responsible government during the administration of Lord Elgin. Common interests and the desire to resist the attraction of U. S. A. led to proposals for federation. Federation was inevitable owing to racial differences and the scattered nature of the settlements. Strong (*Modern Political Constitutions*) points out that the American Civil War made the Canadian statesmen favour a compromise between a true federal system (which had, to them, become discredited) and a unitary system (which was unsuited to their needs). A federal constitution was drawn up by a conference of delegates at Quebec, and was approved by the legislatures of the provinces. It was embodied in a bill by some Canadian statesmen meeting in London and this bill was passed by the British Parliament as the British North America Act of 1867. The Dominion included at first only Quebec, Ontario, Nova Scotia and New Brunswick. Provision was however made for the admission of new provinces. Newfoundland, which was a separate dominion, lost its dominion status as the result of a financial crisis in 1934 and was governed by a commission appointed by the British Government till 1947 when, after a referendum, it decided to join the Dominion of Canada as the tenth province. Now the Dominion includes ten provinces and two territories. It is the largest member of the Commonwealth in area and population and practically includes all British North America.

The constitution is modelled on both U.S.A. and Great Britain in embodying federation and responsible government. But, unlike

U.S.A., the residual powers of government are left with the federal government. The dominion parliament can also veto any act passed by a provincial legislature. Thus, there is more of the influence of unitary government in its constitution, it being something of the nature of an experiment. The constitution of the dominion could be changed only by an act of the British parliament, except as provided by the statute itself, *e.g.*, for uniformity of laws, admission of new provinces, alteration of the extent of old provinces with their consent etc. It was held illegitimate for the federal government to change the terms of the federal contract unless with general assent from the provinces. Particularly, Quebec feared that any change might lessen the security for the equal treatment of the French language in federal proceedings and the position of the Catholic church. The federal constitution could, however, be altered by the British parliament on an address from the dominion parliament.[1]

The position was altered recently. A law of the British parliament passed in 1950 allowed the Canadian federal parliament to amend the constitution in matters lying solely in the jurisdiction of that parliament, without reference to the British parliament.

The federation has sole authority over armed forces. The depression of 1930 forced it to take the initiative in planning the economic life of the community and giving financial help to provincial governments. The powers granted to it by the constitution were not enough for this and so, in 1940, a constitutional amendment included unemployment insurance in the list of federal subjects.

The governor-general is appointed by the crown, and, by convention, he represents the crown and not the British government. He is advised by a Privy Council which is responsible to parliament by convention. Ministers, as in England, may dissolve parliament and appeal to the people. The governor-general appoints the lieutenant-governors of the provinces on the advice of the cabinet. The federal capital is Ottawa.

The American plan of forming the legislature is imitated with some modifications. The senate is nominated for life by the governor-general-in-council and represents the provinces in unequal but specified proportions. The senate originally consisted of seventy-two members. A constitutional amendment of 1915 raised the number to ninety-six. Newfoundland, including the coast of Labrador, is allotted six members. So, the number is now 102. They must be thirty years of age and there is a property qualification. They must also reside in the provinces for which they are appointed. They can be removed in case of certain defined disabilities. They, being appointed by the administration, are therefore from the same party and they tend to be critical of a new government. But, being men

[1] Kennedy (*Cambridge History of the British Empire*, Vol. 6—Canada) offers constructive criticism of certain defects of the constitution which experience has revealed.

of mature years, their rate of mortality is high and the pendulum swings the other way. So, in a very few years, the senate supports the government. It plays no vital part in the constitution. Hence, proposals have been made to reorganize it. But, so far, no agreed scheme has been devised. Mackay (*Unreformed Senate of Canada*, 1926) points out that, in its actual working, the senate hardly deserves the severe criticism brought against it. It has used, on the whole, its veto power with judicious care and has to some extent protected parliament against the encroachments of the cabinet. But the manner of its appointment forms its inherent weakness. Abolishingit wouldbe running counter to the compact with Quebec. Hence, Mackay pleads for the election of half the number by the house ofcommons by P. R., (only certain classes of people being eligible) and the other half to be nominated by the government from certain other classes of the people. Since the senate very soon comes to support any new government, there is very little clamour for its abolition. The senate has never functioned as a champion of state rights. The House of Commons is elected for five years. Quebec has sixty-five members and the other provinces are represented in proportion to their population on this basis. Thus, a province one-fifth as populous as Quebec, would have thirteen members and so on. An amendment of 1946 has adjusted the seats in the house according to changes in population, though each province must have as many seats as it has senators, whether its population warrants it or not. The apportionment follows the decennial census. When Newfoundland joined the federation, it was given seven seats in the house.

The suffrage is not uniform, being regulated by the provinces. Any British subject over twenty-one may be entitled to vote after one year's residence in Canada and two months' residence in the constituency. But persons disqualified in a province are excluded. There is no property qualification. Members are paid. The leader of the opposition receives a salary. Persons holding places of profit under the crown, except ministers, are excluded. In power, the senate, though it has identical powers with the house of commons plays only a subordinate part. Money bills originate in the lower house and may be rejected and amended by the senate. No provision is made for deadlocks. But as the lower house is representative and the senate not, the latter will have to give way if the former presses its point. The system of nomination in the senate has made it a party instrument and this partisan character at first hampers the legislation of a new government, as we saw already. The general form of procedure in the dominion is the same as in Britain, *e.g.* no money grant is voted except on the motion of the government, There is a distinction as in England between government bills, private members' bills and private bills. The lower house has the sole initiative in finance. Electoral procedure is based on the British model, so that here also we have exaggerated majorities of party members in Parliament. A new Speaker, however, is elected with every new government.

Party organisation is less effective than in Britain. The parties have borrowed their names from Britain, *e.g*, Conservatives and Liberals. But on no vital issues are they divided in principle. American influence is seen in the practice of choosing the party leader by convention instead of election by the party caucus in the legislature. A Labour Party has developed. But so far, it is not powerful. The same can be said of the new Social Credit party.

The law rests in the main on English law except in Quebec where the Common Law is the old French law of Royal France. But the criminal law is English. Unlike the United States, there are no federal Courts except a Supreme Court at the capital. The judges can be removed by an address from parliament, as in Britain. The Supreme Court decides disputes between provinces and hears appeals from lower courts. The judges are appointed by the governor-general. The court can declare void any act passed by the dominion parliament which is inconsistent with the constitution. Appeals in civil cases may be carried to the Privy Council. Unlike the old British India, where the governors could not be sued for personal illegal acts in India, though they could be prosecuted after their term both in India and England, like other dominion governors the governors here could be sued.

Each province has its own government with its own legislature. The Lieutenant-Governor is appointed by the Governor-General. All provinces except Quebec have unicameral legislatures. All provincial Acts must be assented to by the Dominion Government which could also disallow them. But this power is now largely in abeyance. The legislatures could amend their constitutions. The Legislative Council is of no importance. No province with one house wants two.

Besides national parties, there are minor regional parties in the provinces. The Social Credit Party has become important in Alberta.

Each province has a Supreme Court. Below are County Courts. The lowest are the Local Justice Courts. Local government is as in England.

Many Canadian provinces have narrow financial resources. Hence, many urge increase of powers for the federal government. In 1937, the Boswell-Sirois Committee (a royal commission appointed to consider the situation) recommended greater centralisation in the economic and legislative sphere. But the Privy Council held in the same year in connection with the "Bennett New Deal Legislation," that the federal legislature could not adopt laws for the improvement of the social and economic condition of the people which touched upon the provincial sphere, thus practically giving residuary authority to the provinces. This decision strengthened the desire for a radical revision of the financial and constitutional relations between the federal government and the provinces. In 1933, appeals

to the Privy Council in criminal cases were abolished. Legislation for the abolition of civil appeals to the Privy Council was also being discussed from 1938. But provincial jealousy of centralisation was very keen. It was only in 1948 that these appeals also were abolished.

As in the other dominions, there is no established church except in Quebec where the Roman Catholic Church is the established church.

AUSTRLIA

It differs from Canada in the fact that it was never the acquisition of war and that the whole continent is held by a single race under a single flag. The colonies of British settlers developed into six states. A commonwealth was appointed in 1851. They became self-governing colonies before 1890. The nationality is homogeneous and there is one language, English, and one religion, almost all being Protestants. These factors and its unique position as one whole unit, remote from other lands and the recognition of the advantages of union led to proposals for federation. Federation was inevitable owing to the scattered nature of the population and the divergent interests of certain of the maritime states *e.g.*, New South Wales wanted free trade and others, protection. Scheme of federation was discussed for a number of years before it was carried out. The chief reason which immediately led to federation was undoubtedly the presence of European neighbours in the Pacific. Besides this need of common defence, there was need of uniform regulation against immigration of coloured races and the abolition of inter-colonial tariffs. The constitution was framed after careful consideration and prolonged deliberation so as to lead successfully to federal unity. The framers were anxious to preserve state rights as fully as possible. (Contrast Canada.) A draft bill prepared by the delegates in 1891 was revised by a second convention in 1897 and sent to the colonial legislatures for criticism. In 1898, a convention considered these criticisms, and the constitution was submitted to popular vote. After amendments made to satisfy New South Wales, it was ratified on a second vote and was passed into law by the Imperial Parliament in 1900. It came into force on January 1, 1901. Six states formed the commonwealth—New South Wales, Victoria, Queensland, South Australia, West Australia and Tasmania. It includes also various small islands. It rules a dependency, Papua, and took up as class C mandate under the League of Nations for certain German colonies in the Pacific like the German New Guinea. Now they are held under trusteeship from the United Nations Organisation.

The Northern Territory is not a state. But it has its own government under an Administrator and sends a delegate to the federal parliament. This person can vote only on matters affecting the Territory. The federal capital is Canberra.

As in Canada, the constitution embodies federation and responsible government. But it resembles the constitution of U.S.A. more

closely. The constituent states transferred only a part of their powers to the central government and preserved the rest. But constitutional amendments have given the commonwealth wider powers than the federal government of U.S.A. or Switzerland has. The commonwealth can take over the state railways, legislate on marriage and divorce and on several industrial matters. It enjoys concurrent powers on a large number of topics. Amendment of the constitution may be effected by a bill passed by the commonwealth parliament and approved by a majority of the electors of the commonwealth and by a majority of the states. Note, however, that (1) many provisions of the constitution may, under the constitution, be changed by an ordinary act of the commonwealth parliament and (2) the commonwealth constitution, being itself an Act of the British Parliament, could be legally altered by it. Like Canada and U.S.A., the commonwealth can admit judges are [illegible] U.S.A. it may establish them under specified conditions. But unlike it, it may give representation in parliament to territories and make distinctions regarding representation between the original states and states later admitted.

Bryce, commenting upon the Australian constitution, considers that, compared with it, the American constitution is old-fashioned and parts of the Swiss constitution archaic. It must be remembered that there is no aristocracy in Australia and the sentiment of social equality is widespread. Hence, it saw the high-water mark of popular government like universal suffrage, direct popular vote, payment of members of parliament, greater economic control by the state etc. Five of the six colonies had a democratic suffrage as early as the 'fifties. As early as the 'sixties, "they had turned aside from the Cobdenism which was still the orthodox creed of English democracy." In Victoria, vote by ballot was set up in 1853, payment of M.P's in 1878 and wage boards to fix minimum wages in 1896. South Australia had women suffrage in 1895. Tasmania had P. R. in 1896. In New South Wales, free, compulsory and secular education began as early as 1867, old age pensions in 1901 followed by maternity benefits, and child endowment in 1927. Compulsory vote was set up in Queensland in 1915. In 1891, the Labour Party issued a mandate to its members. In 1931-32, the Labour Premier of Queensland, Lang, made parliament a machine for ratifying the decrees of the labour caucus outside parliament and thus provoked a bourgeois reaction. The commonwealth made the vote compulsory in 1927. Labour governments have been in power several times in the commonwealth also. There was one till 1949.

The governor-general represents the crown and is advised by the Federal Executive Council. This ministry is responsible to parliament by convention. The governors of the states are however appointed by the crown. The ministry can appeal to the people. But unlike Canada, Australia has an elected senate with co-ordinate powers and there is some doubt as to how far the ministry is dependent on the senate. Under certain circumstances the ministry can indirectly cause the dissolution of the senate.

There is a legislature of two houses. The senate is composed of sixty members—ten representatives from each state. Thus, in structure, it is based on the equality of the states. (Contrast Canada.) Members hold office for six years and half retire every three years, though they are eligible for re-election. They are directly elected by the people of the state voting on a general ticket. Qualifications are the same as for the lower house. Unlike the president of the Canadian Senate who is appointed, the Australian Senate elects its own president.

Since the whole state forms the electorate, thousands of electors vote blindly at party behests without any knowledge of the candidates. This enables best-disciplined parties like the Labour Party to get the majority of the votes Hence, there is no question of state rights. Bryce notes that this development was not anticipated by the framers of the constitution.

The house of representatives is elected for three years. The number in each state is proportionate to the number of its people. The electoral districts are equal in population and have one member each. Qualifications of voters are the same as those laid down in the state law for election to the lower house of the state. No plural voting is allowed. Candidates must be twenty-one years of age as in Canada. Maoris and, since 1921, people from India, if qualified, enjoy the vote. Election is by preferential voting in single-member constituencies, the preferences being distributed till one candidate secures an absolute majority.

In powers, the senate has co-ordinate powers. Though money bills should originate in the lower house, the senate can either reject them or return them with requests to omit or amend a provision. Since both houses are representative, there is a special arrangement to solve deadlocks.[1] The lower house may pass a rejected law after three months. If the senate still disagrees, the governor-general dissolves both houses. If disagreement again appears on the measure in the new parliament, the governor-general convenes a joint sitting whose vote is final. The senate has been called the most powerful amongst the second chambers of the British Commonwealth. Though it cannot amend money bills, it could suggest amendments and enjoys therefore virtually power to amend. But some writers think that the best political talent goes to the lower house, and, hence, the senate has not attracted men of experience. Neither has it any special functions. It seems to have exercised little moderating influence on legislation. The legislature can amend the constitution. There is also provision for referendum.

Powerful Labour Parties have grown up acting under great discipline and skilful organisation. Still, says Bryce in his *Modern Democracies*, as in all English-speaking democracies as compared to those of the ancient world, public opinion is, on the whole, kindly

[1] This procedure is not applicable to money bills.

and free from rancour against individuals. The long-established habit of respect for law and the provision of constitutional methods for settling disputes have stood the children of England in good stead. Further, some questions which have been the foundations of European parties like religious antagonism are absent. There is no race antagonism as in Canada for the settlers are all of British stock. So, economic issues form permanent divisions. But, even here, there is an under-current of prudence and self-restraint amongst the working masses. The first labour government for the whole commonwealth was formed only in 1911.

The traditional two-party system, borrowed from Britain, was, thus, complicated by the growth of the Labour Party which is admirably organized both for federal and state purposes. At the time Bryce wrote, judging from the experience of the labour government he saw, he noticed hardly any political changes and few large economic changes. The government was vigorous in maintaining naval and military defence and the imperial connection. Theoretical doctrines had little charm, and there was no passion because there were no wrongs to avenge. The power of the Labour Party was built up on a local and vocational foundation which covers the whole country and culminates in a parliamentary caucus in each of the legislatures. The labour members are bound by the policy adopted by the conference of labour organizations. So, the caucus itself is largely directed by central labour organizations outside the legislatures. It also works in secret. Bryce noted that it superseded the free action both of representatives and executive ministers and thus reduced the ministerial responsibility to the electors for the time being. After what Bryce wrote, further development has been that in the labour government the selection of ministers and even the premier is done by the party caucus. Labour Party, based on rigid discipline, is, thus, a formidable enemy to the other parties which are distracted by individual jealousies. The Labour Party also desires greater unification.

The Australian judicial organization is midway between those of Canada and U.S.A. The Federal High Court hears not only appeals from the State Courts and controversies between states but can also invest the State Courts with federal jurisdiction. The Federal Court can decide on the constitutionality of federal and state laws. Appeals to the Privy Council in constitutional issues can be only with the leave of the High Court which, on principle, it refuses. Note the contrasts with Canada and resemblances to U S.A.

The governors of the states are appointed by the crown. There is no federal veto unlike Canada, as the residuary powers are vested in the states. All have bicameral legislatures except Queensland. One of these houses is elected on a more restricted suffrage or nominated. Franchise qualifications differ from state to state. The state legislatures can amend their constitutions as in Canada. The Legislative Councils play only a subordinate and little-noticed part in state

policy. They do not resemble the second chambers in the American states, for they contain few men of political prominence and do not greatly affect public opinion. Queensland abolished its second chamber in 1922 under its Labour Government. As in the United States, the states in Australia inherited the original powers of the former colonies and only relinquished the minimum powers necessary for the federal government. In spite of this provincial jealousy, there has been a move for increase of federal powers.

Australia forms also the earliest instance of the use of state socialism. Bryce noted that (1) there was very little of avowed socialistic doctrine. (2) There was no departure from constitutional practice and the movement was gradual. (3) It did not affect the prosperity and individual self-helpfulness of the people. But, he noted that freedom of contract was limited between individuals, *e.g.*, wage boards composed of representatives of employers and workers fixed wages and hours of work in particular industries, and courts of arbitration decided all questions relating to the industry. A review of this compulsory system led him to conclude that its failure to prevent all strikes was due to the fact that it promoted hardening of combinations—employers leagued for defence and trade unionists became militant and intent on fresh demands. The plan of raising wages by law led to the raising of duties on imports in proportion to the rise of wages and high direct taxation on the rich. With regard to state management of industry, Bryce thought that, except railways, it was not a success and was wastefully managed. If there was a labour administration, there was political pressure, and some states virtually accepted the liability of government to find work for persons unemployed.

These judgments of Bryce need revision in the light of the increase of state control over the economic life of the community throughout the world.

There is, also, a feeling that the constitution has outgrown the conditions under which it was framed. Economic circumstances have weakened the financial stability of some states. Many feel that the centre is being thwarted by the states. Even railway gauges differ in the states. Criminal law differs from state to state. Queensland has no capital punishment. Hence, many favour greater unification. On the other hand, champions of state rights are for state autonomy, and some of them fear that the dependence of the states on financial subventions from the centre weakens the independence of the states.

Comparison with Canada.

The constitutions, like that of U.S.A., recognise the principle of the supremacy of the constitution, are written, and divide powers between the centre and the units ; the judiciary has the power of judicial review. In both, the governor-general represents the crown, and there is responsible government. Ministers may dissolve the

legislature and "appeal" to the country. Persons holding places of profit under the crown (except ministers) cannot sit in parliament. The second chambers have not proved champions of state rights. The units have to depend on grants from the centre. Unlike U.S.A., there is no bill of rights. In U.S.A., on all state matters, state courts are supreme. The centre, in both Australia and Canada, has sole authority over armed forces ; but, in Australia, states may be allowed by the centre to raise armed forces. In Canada, residuary power is with the centre. The Australian states have greater autonomy than Canadian provinces, though not so much as American states. In Canada, provinces are unequally represented in the senate, lieutenant-governors are appointed by the centre and the centre can disallow provincial laws.

NEW ZEALAND

It was first discovered by a Dutch navigator called Tasman who gave it its name, though he never set foot in it. In 1769, Captain Cook rediscovered it and British colonisation began. Responsible government followed in 1855. The Dominion rules over a few other islands and held a C class mandate under the League of Nations for the old German colony of Western Samoa which is now held as a trust under the U.N.O. The constitution is unitary. There is no supremacy of the constitution as in Canada or Australia. It can be amended easily. In 1947, the Statute of Westminster (from which New Zealand had been excluded at first) was extended to it also.

The governor-general represents the crown and governs with the help of a responsible ministry. The capital is Wellington. There is a legislature of two houses called the General Assembly which consists of a Legislative Council and a House of Representatives. The Legislative Council was to be an elective body by an Act of 1914. But, as it was never made operative, it continues to be a body of members nominated by the governor-general for life. The House of Representatives is elected by universal suffrage by all the residents for three years. There is no racial question. The Maoris are on the best terms with the white people, and are represented in Parliament. They send representatives to the lower house, and it has been customary recently for a Maori to be in the cabinet.

The Constitution Act of 1852 empowered the General Assembly to modify the Act and. in 1876, the Assembly abolished the provincial governments and made New Zealand a unitary state. The upper house is a body with limited powers and is weak. The lower house could carry any money bill over the head of the Council. For deadlocks in ordinary legislation, it is provided that if a bill is passed in two successive sessions by the lower house and is rejected by the Council, the governor-general may dissolve both houses or convene a joint sitting.

The great majority of the voters do not think in abstractions and show a disposition to extend the functions of the state. There

is compulsory arbitration with judicial fixing of wages which has reduced the number and extent of strikes and their frequency and severity, according to Bryce, though it has not solved all labour problems. The state manages several industries. Bryce remarks that, though generally revealing greater expenditure than private effort, it is too soon to say whether this paternalism has resulted in economic loss and galling restrictions on individual liberty. His remarks need qualification now. As in Australia, there is no religious or racial question and there is no aristocracy. The Labour Party is the only organised party, but is weaker than in Australia. There is a Court of Appeal. Appeals to the Privy Council lie normally from this.

SOUTH AFRICA

It was colonised by the Dutch, and later the British. At the close of the Boer War in 1902 Britain had two self-governing colonies—Cape Colony and Natal, and two conquered territories—Orange Free State and the Transvaal. These latter were also given self-government, after a war with them and their conquest. In 1908, a convention of delegates from all the colonial legislatures drew up a constitution for the Union of South Africa. Considerations like fear of attack from without and disruptive forces of racial tension within between the Dutch and the English, and the Whites and the Blacks made a strong union necessary.[1] The features which we may call federal are : (*i*) The Supreme Court decides judicial disputes between the provinces, though it cannot question the constitutionality of the laws (*ii*) Each province has its provincial division of the Supreme Court. (*iii*) Provincial representatives are elected to the senate equally. (*iv*) The different provinces are represented in the cabinet. (*v*) Certain powers are given to the provinces. Though the Provincial Councils have no exclusive powers and the Union Parliament may legislate on any topic and their ordinances may be vetoed by the central government, the provinces possess a vitality of their own. They are not mere subordinate authorities, as they have been given some original powers. The Union consists of four provinces—Cape Colony, Natal, Orange Free State and the Transvaal. It also holds former German South-West Africa which is governed by an Administrator and a government based on the provincial model. This came to South Africa as a C class mandate held under the League of Nations. South Africa has refused any right of supervision over this by the U.N. Trusteeship Council.

The constitution can be amended thus : Amendments affecting representation of provinces, qualification of voters, and equality of the English and Dutch languages have to be passed in joint sittings by a two-thirds majority. Other amendments are easy. Afrikaans was also added as an official language in 1925. Besides the Union Jack, there is a national flag.

[1] Even now, whites are only 20% of the population.

The original provision in the constitutiou allowing the Union Parliament to abolish provincial legislatures or restrict their powers was modified in 1934 to provide that it can do so only, if the provincial legislature concerned petitioned to this effect.

The political and economic power of the whites is kept up by laws of segregation and electoral disqualifications of other races. Dr. Malan, premier in 1951, held that the Statute of Westminster had given complete power to the South African Parliament to amend any law in the ordinary way. When the court declared invalid a law affecting the franchise of "coloured" voters in the Cape province, he introduced a law in 1952 vesting complete authority to decide whether a law is invalid, not in the ordinary court as at present, but in a High Court of Parliament composed of members of parliament. But, even this law was declared invalid by the court. Mr. Strydom, successor of Dr. Malan, has declared his intention of continuing this attempt to transfer "coloured" voters to a separate parliamentary roll and also asserting the sovereignty of parliament over the court.

There is a governor-general representing the crown. But the Status of Union Act of 1934 has laid down that any reference to the sovereign means the sovereign acting on the advice of the ministers of the union. The governor-general also acted as the British High Commissioner for the control of certain native areas adjoining the Union like the Swaziland and the Bechuanaland protectorates and Basutoland. But, in 1930, this connection was ended and this duty was transferred to the representative of the British government in South Africa.

The governor-general is advised by an executive council which is the cabinet. Responsible government operates by convention. The capital is Pretoria. But the legislature meets at Cape Town.

The legislature consists of a senate and a house of assembly. The senate is composed of forty-four members. Each of the four original provinces elects eight members by P.R. for ten years, the electorate being the members of the provincial councils and the representatives of the provinces in the house of assembly. The governor-general-in-council nominates eight others for a period of ten years. The Representation of the Natives Act of 1936 allowed four senators to represent the natives. But these should be Europeans. All senators are to be over thirty. There is also a property qualification and one of residence. The house of assembly is elected for five years through single-member constituencies under suffrage laws which admitted only male voters before 1924. In 1924, female suffrage was extended. In 1931, all adult persons over twenty-one had the vote. But the electorate is limited to the whites, except in the Cape Province, where there is no colour disqualification and the vote is based on a literary and property qualification. This Cape franchise could be amended only by a law passed by a two-thirds mjority in both houses. As mentioned already, attempts are being made to alter this. Africans with a property qualification in the Cape pro-

vince have three members to represent them in the assembly. But all these should be Europeans. In S. W. Africa, also, only the Europeans have rights. The law of 1931 introduced also the provision, imitating the similar one in the Irish Free State, that the vote should be confined to the nationals of the Union. Members of the legislature could be Europeans only. They are paid.

The senate possesses co-ordinate powers and, as in Canada, could reject, though it could not amend, a money bill. But a money bill must originate only in the lower house. Deadlocks are solved by joint sittings which apply also to money bills. Hence as the members in the Senate are only few, being only forty, it is distinctly weak. Keith remarks that as the senate is only a house of review, it does not attract merit.

Each province is governed by an administrator appointed for five years by the governor-general. He is advised by an executive committee of four members elected by the provincial councils by P.R. The administrator cannot act against its advice. But, with regard to other duties which may be imposed on him by the Union Government, he acts on his own authority without consulting the committee. In each province there is a provincial council elected for three years. It is elected by the same electorate as for the Union Parliament. The provincial council has authority to deal with local matters and certain subjects are delegated to them. But these are purely local, and their ordinances may be vetoed by the governor-general-in-council. A constant series of deficits made the government of General Hertzog desire unification, but no such plan has been carried out.

The *parties* include the South African (now called United) Nationalist and Labour Parties.

A Supreme Court sits in provincial divisions. It decides validity of provincial ordinances. The law is Roman-Dutch[1] modified by the influence of English law. Appeal from it to the Privy Council was only by special leave and was not encouraged by the Privy Council. Appeals to the Privy Council were abolished by law in 1950.

CEYLON

From 1802, it was separated from India and became a Crown colony. In 1920, it was given a representative council. A constitution of 1931 was meant to be a compromise between crown colony government and responsible government. A Council of State (whose members were mostly elected) was to help the governor in administration through seven committees whose chairmen formed the council of ministers. But the governor had also independent powers of legislation and administration. Three nominated officers of state controlled the reserved departments. The crown also retained the power

[1] This Roman-Dutch law has been introduced into S.W. Africa and S. Rhodesia also. In 1927, trial by jury in civil cases was abolished.

to legislate by orders-in-council. The constitution meant a limited form of responsible government in internal affairs.

In 1946, a bicameral legislature with responsible government was provided. But the British government reserved the right to legislate by orders-in-council for defence, foreign policy and constitutional amendment. The legislature was forbidden to make laws which discriminated against any community or religion. Such laws should be reserved by the governor for the king's assent.

In 1947, the Ceylon Independence Act granted Ceylon the status of a Dominion. The only limitations were certain provisions for the use of Ceylonese territory for common defence as the result of agreement between Britain and Ceylon.

The constitution is based mainly on that of Australia, but many conventions were also enacted into law. Thus, in 1947, it became the first crown colony to achieve Dominion status. The governor-general appointed by the crown is the constitutional head. But the cabinet exercises all power and is responsible to the legislature. Sec. 46 (1) stresses the principle of collective responsibility. Following the British model, Sec. 47 provides for the appointment of parliamentary secretaries, two of whom must be in the senate. At least two ministers should be from the senate. Sec. 50 provides for a cabinet secretariat. The legislature is of two houses. Half of the senate, as in Burma, is elected by the lower house by P.R. and the other half is nominated by the governor-general from among distinguished persons. All senators must be over forty and hold office for six years, a third retiring every second year. The lower house (House of Representatives) consists of members, most of whom are elected from single-member constituencies, though some like Colombo are multi-member constituencies. Six members are nominated by the governor-general to represent Europeans and Burghers. All hold office for five years. All power is with the lower house. The senate has no power to reject any bill, but can delay its passage by one year. The constitution can be amended only by two-thirds of the total membership of the lower house.

There are a number of political parties, the most important of which is the United National Party. There are some Leftist groups like the Lanka Sama Samaj party. The Ceylon Tamils and the Indians form separate groups. The population is roughly seven millions.

The island is divided into nine provinces, each under an agent of the government. The Supreme Court whose judges are appointed by the government is the highest court. There are rural courts in rural areas dealing with petty civil and criminal cases. The judges of these are appointed by an independent Judicial Service Commission. Fundamental rights are, as usual, guaranteed by the constitution.

PAKISTAN

After separation from India, the land consists of two separated regions : (1) West Pakistan comprising the old provinces of Sind, Baluchistan, North West Frontier Province, western part of the Punjab, certain contiguous states and tribal areas ; (2) East Pakistan, including Eastern Bengal and the Sylhet district of Assam. The total population is about seventy-five millions. The state has good supplies of rice and wheat. East Bengal is rich in jute. Cotton flourishes in East Bengal and Sind. There are deposits of oil in the Punjab, Baluchistan and the North West Frontier Province. The state is also favoured in coal, sulphur, rock salt and gypsum.

The Indian Independence Act of 1947 gave Pakistan power to adopt the Government of India Act of 1935 to suit her purposes. The state became a Dominion with a governor-general appointed by the crown. As in India, a constituent assembly met to draw up a constitution and, as in India, functioned also as an interim legislature to which the ministry was responsible.

The assembly could not finish the work of making a constitution even after working for seven years owing to internecine differences. A draft was, indeed, prepared by a committee. This draft contained a guarantee of fundamental rights and proposed a federation with a strong centre. A Head of the State was to be elected for five years by a joint session of both houses of the legislature and could hold office only for two terms. The assembly modified the draft to insist that the Head should be a Muslim only. Responsible government was provided. The upper house—the House of Units—was to represent the legislatures of the different units of the federation. The draft suggested equal representation of the units. But this was modified to secure representation for East Pakistan equal to that of West Pakistan. The lower house - the House of the People—was to be elected by the people. Here also, parity between East and West Pakistan was introduced. Separate electorates were provided for minorities. Both houses were to have equal powers except in finance, and deadlocks were to be solved by joint sessions. The assembly added a provision that a board of five mullas were to advice the Head of the State on whether any law is repugnant to the Islamic code. Such laws should be sent back to the legislature for reconsideration and the question should be decided by a majority of the house. The draft made a division of central subjects, provincial subjects and subjects of concurrent jurisdiction. But residuary powers would be with the centre and a federal law would prevail over a provincial law. A federal court would decide all disputes. Provinces would have a single house (House of Legislature) to which the provincial ministry would be responsible.

In 1954, the governor-general dissolved the assembly on the score that it failed to complete its work. He caused a new draft constitution to be prepared. The fifteen provinces and states in West Pakistan were to be integrated into one unit. This and East

Pakistan would form a federation. The head would be a president elected for four years (the term being renewable) who would select his own ministers who would not be responsible to the legislature. The prime minister, who would be called vice president, would have to be a member of the legislature. The legislature would represent both wings of Pakistan in equal proportion and would control money bills. The unit of West Pakistan would consist of fifty districts grouped into eleven divisions under commissioners and Lahore would be its capital. According to this scheme, East Pakistan will have an area of about 54,500 sq. miles and West Pakistan, about 2,88,590 sq. miles – more than five times the other ; but both will have equal status. The Federal Court, however, questioned the action of the governor-general on the ground that, under the Indian Independence Act of 1947, the constitution could be framed only by a constituent assembly. So, in 1955, the government has proposed that this draft should be considered by a convention elected by the provincial assemblies of East Bengal, the Punjab, Sind, and N.W. Frontier Province and including members nominated by the governor-general to represent Baluchistan, the integrated states and the tribal areas. The convention has to finish its work in six months.

THE CENTRAL AFRICAN FEDERATION

The British South Africa Company governed N. Rhodesia till 1924 when the British government took over the administration. A governor with a council was provided. South Rhodesia, however, enjoyed internal self-government except for certain reservations in the interests of the natives. These interests were looked after by the High Commissioner for South Africa whose office was separated from that of the governor-general of South Africa in 1931. External affairs of S. Rhodesia were also controlled by the British government. The Nyasaland protectorate had an executive council and a nominated legislative council. In 1944, a central African council was set up to promote co-operation between the three areas. In 1953, the three were united in a Central African Federation. This includes S. Rhodesia, N. Rhodesia and Nyasaland with a population of about six millions. The federal legislature is a single house of thirty-five members—seventeen representing S. Rhodesia, eleven N. Rhodesia and seven Nyasaland. Three of the representatives from each territory should represent Africans, and two of these from the two Northern territories should be Africans. The federation looks after common matters like external affairs, defence, immigration, economic development, communications, customs etc. The Colonial Office retains control. Of these areas, S. Rhodesia, which already enjoys self-government, is the most powerful.

Constitutional amendments could be passed by a two-thirds vote of the Federal Assembly. An African Affairs Board, set up by the assembly, will look after African interests. A Federal Supreme Court is also set up. There is a federal list of powers, a concurrent list and a territorial list. For ten years, there would be no change in this except with the consent of all three territorial legislatures.

The governor-general would be helped by an Executive Council consisting of ministers.

THE GOLD COAST

British trade settlements had begun here in the seventeenth century. In 1946, it became the first West African territory to have a non-official African majority in its Legislative Council and African members in the Executive Council. A new constitution of 1951 set up a Legislative Assembly with elected majority (directly elected by universal suffrage in the cities and indirectly elected by universal suffrage in rural areas). Chiefs' Councils of certain areas also send members to it. An electoral college in the Northern Territories sends some members. The governor selects his ministers with the approval of this assembly which can also remove them by a two-thirds vote. It was agreed in 1954 to provide for an enlarged assembly chosen by direct election and a cabinet responsible to it, the governor having reserve powers in foreign policy, defence, Togoland and certain police matters. It may be noted that the former German colonies of Togoland and the Cameroons were divided between England and France as mandatess after the First World War.

NIGERIA

This was ruled orginally by the Royal Niger Company. Lord Lugard (governor from 1900 to 1914) developed two ideas : (1) "indirect rule", that is, through and by native chiefs, so that the interests of the natives should not suffer.[1] (2) "Dual mandate", that is, Europeans can be allowed to exploit tropical products subject to the natives not being affected. Native welfare should be developed. North and South Nigeria were united under Lugard as governor-general in 1914 with the capital at Lagos. Thus, it became the biggest of Britain's African colonies. In 1947, a parliament with an African majority was set up. A new constitution of 1951 gave it wider powers.

The new constitution proclaimed by Britain in 1951 set up a central legislature (House of Representatives) and three regional legislatures (Houses of Assembly). There was a central council of ministers of twelve including six officials. Each region had an executive council and a legislature having powers in certain subjects, subject to the assent of the central government, which also had the power to legislate on all subjects. Greater regional autonomy was provided in 1953. South Cameroons was added as a federal unit in 1954.

A new constitution of 1954 set up a Federal House of Representatives which includes delegates from the Northern Region, East Region, West Region, South Cameroons, and Lagos, and six representatives of certain special interests. A federal council of ministers (three from each region and one from South Cameroons) is to carry on the government.

[1] This "indirect rule" was also followed in Kenya and Uganda.

Gambia was given an enlarged executive council and an enlarged legislative council with an unofficial majority in 1954.

Sierra Leone, British colony and protectorate in West Africa, is separate. Its legislative council and executive council were given unofficial majorities in 1950. One thousand two hundred miles west of the African coast is the island of St. Helena under a governor with a nominated council.

BRITISH EAST AFRICA

Kenya, formerly a protectorate, became a crown colony in 1923. In 1955, it was proposed to enlarge the legislative council. But official majority would be retained, and the members would be either officials or nominated non-officials. Adjoining it is Tanganyika. This was formerly German East Africa which was divided between Britain and Belgium as mandates after the First World War, the British part being called Tanganyika. It is now held under trusteeship under the United Nations. A nominated legislative council was set up.

Near by is Uganda. There are schemes of unification of these three units. A common court of appeal was set up. Co-operation is secured through the East African High Commission comprising the governors of the three areas. This looks after common services.

Zanzibar continues as a protectorate. British Somaliland had a governor with an advisory (non-elected) council. Mauritius has a legislature with an elected majority.

MALAYA

This British colony consisted of four federated states, five non-federated states and the two separate British settlements of Penang and Malacca. The colony was in three areas : (1) Straits Settlements, (2) Federated Malay States where British officials ruled, (3) Unfederated Malay States. Here, native sultans were helped by British advisers. Singapore was separate.

The nine Malay States are as follows : Perak, Johore, Selangor, Kedah, Kelanton, Negri Sembilan, Pahang, Trengganu and Perliss. In 1946, a new federal scheme was proposed for the nine Malay states by which they would be joined into a Malayan Union. There would be a governor, an executive council and a legislative council with an unofficial majority. The rulers would only be heads of the Muslim faith. The British government would reserve defence and foreign policy. A High Commissioner would safeguard the interests of the different communities. But this scheme was modified later. In 1948, Britain made agreements with the sultans restoring internal sovereignty. A scheme was now put forward including in the federation the settlements of Penang and Malacca. The federal government would be given only limited powers.

Under this constitution set up by Britain in 1948, a Malayan federation is created which includes the nine states and the settlements of Penang and Malacca. The federation is under a British High Commissioner helped by an Executive council including official and non-official members. The Legislative Council has an unofficial majority. The federal government controls defence, foreign affairs, communications, labour welfare, industry, trade, banking and currency. Each state is under its ruler helped by a British adviser and an Executive Council and a State Council. Penang and Malacca have the same system of government under a British Resident Commissioner. The law relating to citizenship is designed to safeguard the Malays from being swamped by the numerically superior Chinese and other non-Malay groups.

There is also a Conference of Rulers which the High Commissioner consults. There are a number of political parties.

In 1954, the British government agreed to provide for direct election to the Council on a common electoral roll. Besides fifty-two elected members, there would be forty-six nominated members (three officials, eleven for states and settlements, twenty-two for scheduled classes, three for racial minorities and seven nominated reserve).

Singapore has a separate constitution. The governor had an executive council and a legislative council (partly official, partly elected). The Rendel Commission of 1954 recommended an assembly with elected majority and a cabinet responsible to it, except in foreign policy, defence and internal security. Need for close association with Malaya was also stressed. The new constitution came into force in 1955.

In the Pacific, North Borneo was administrated by a British chartered company, the British North Borneo Company, from 1888 to 1942. It was taken over by the British government later. A governor and an advisory council ruled it till 1950 when an executive council and a legislative council (with a nominated majority) were set up. Britain has also a number of Pacific islands. The Fiji Islands were given in 1951 a legislative council with extensive powers of self-government, though executive power was still with the governor. New Hebrides continues as a condominium of Britain and France.

Sarawak, ruled by a British Rajah, was ceded to Britain in 1946. A legislative council has been set up to associate the people with the government.

THE BRITISH WEST INDIES

The British West Indies are scattered over a large area from the Bahamas on the north to British Guiana in the south and from British Honduras on the west to Barbados on the east. Jamaica is the largest of the islands and contains nearly half the total population.

Though the islands were rich, their prosperity suffered after the abolition of Negro slavery and the growth of the beet sugar industry in Europe. In the seventeenth century, representative government was introduced, but limited to white men. This was abolished in the nineteenth century on the principle that in areas with a predominant native population self-government should not be given only to Europeans. Each colony, later on, had a local legislature in addition to the governor. Jamaica has a nominated Legislative Council and an elected House of Repr sentatives. It has also an Executive Council, partly recruited from the lower house and partly nominated. In the Bahamas also, as also in the Barbados, there is a nominated Legislative Council and an elected Representative Assembly. The Lower House in Bermudas is called the House of Assembly. In the Leeward Islands, there is a Legislative Council with some elected and some nominated members. In the Windward Islands and Trinidad, a certain degree of self-government was extended in 1950. The British Honduras has a House of Representatives. British Guiana was given a legislature with an elected majority in 1961, the Governor retaining the right of veto. But in 1953, owing to political troubles, this constitution was suspended.

There was, for long, a proposal to federate all these colonies. Despite many efforts to devise a federal union, the first result was only the establishment of a Court of Appeal for most of the islands, consisting of the chief justices of these areas. A commission of 1933 recommended the amalgamation of the Windward and the Leeward Islands under the name of the British Carribean Islands with a governor exercising general supervision. Though there was to be no federal legislature or executive, there would be advisory annual conferences. In 1947, on the initiative of the British government a conference of seven colonies, including Barbados, Jamaica, Leeward Islands, Windward Islands, Trinidad, British Guiana and British Honduras, met to consider a joint authority for administration finance and defence. Bahamas refused to attend. The conference accepted the idea of a federation called the British Carribean Federation on the model of Australia. A conference in 1953 suggested that the federation should include Barbados, Br. Honduras, Jamaica Trinidad and the islands of Antigua, St. Kitts-Nevis, Mont Serrat Granada, St. Vincent, St. Lucia and Dominica. There would be a council of state presided over by a governor-general to carry on the administration. The legislature will consist of a senate and a house of representatives. Trinidad will be the capital.

By 1955, the federal plan was accepted by most of the units The projected federation will include Jamaica, Trinidad, Barbados Leeward Islands, Windward Islands and British Guiana. The total area will be over 95,000 sq. miles with a population of nearly four millions.

NORTH IRELAND

This includes only the six counties of Ulster along with the two parliamentary boroughs of Belfast and Londonderry. It is not a Crown colony, as it has been given responsible government. It is not a Dominion, for its constitution is based on the Government of Ireland Act of 1920 which asserts the continuance of the undiminished authority of the British parliament in foreign policy etc. and imposes some restrictions on the government. Postal service continues under the English government. The state also sends thirteen representatives to the British house of commons and a number of peers to the British house of lords. The channel of communication is through the British home office.

The executive consists of a governor helped by a ministry (called the Executive Committee of the Privy Council of North Ireland). The legislature consists of a senate and a house of commons. The senate is elected by the house of commons for eight years by P. R. Half retire every four years. The house of commons is elected for five years. The election was at first by P. R. But, in 1929, this method was abolished, and a system of single-member constituencies was set up. In 1928, the vote was extended to women on the same lines as in Britain. Deadlocks are to be solved by joint sessions. The legislature is restricted from imposing certain taxes. Taxes are collected by British authorities who, after meeting certain deductions, remit the balance to the account of North Ireland. Practical power in the state is in the hands of the Protestant majority.

A supreme court of judicature consists of a court of appeal and a high court. Appeals in certain cases go to the British house of lords. Local government is as in England.

THE REPUBLIC OF IRELAND

This state includes only South Ireland. The population, according to the figures of 1951, was 2,900,000 showing a decline since 1841 when it was 6,500,000.

Though this state is not, now, a member of the Commonwealth, it was so till 1949. After being subject to English rule for a long time, it secured its freedom in 1922 as the result of a treaty with England by which it was given the status of a Dominion and called itself the Irish Free State. This constitution was changed in 1937, and the land was called by the name of Eire.

We shall, first, take up the constitution of the Irish Free State. It was framed after a wide enquiry into the political machinery of other countries and embodied ingenious additions. Alone of the other parts of the Commonwealth, (1) the constitution recognised responsible government, (2) the Irish Free State bestowed its constitution upon itself, (3) it recognised the office of the President of the Executive Council, (4) in the same way, the convention of the British constitution that the parliament should meet at least once a year was made a positive law, (5) unlike other dominions and

Britain which ignored civil rights in the constitution, the constitution set down civil rights. There was no parallel to the Irish Act in the case of other dominions whose constitutions owed their force only to acts of the British parliament. Here, the Irish Constitution Act was enacted into a statute by the British parliament only later on.

The constitution, following the treaty, limited the size of the Irish army, provided for the control of the Irish harbours by Britain in times of war and imposed an oath of allegiance to the British king to be taken by members of the legislature also. The power of the state was also limited by the provision that anything in the constitution, contrary to the treaty, was void. This provision had to be changed in 1932 to provide for the passing of a bill to eliminate the oath of allegiance. In 1933, the need for taking this oath was removed. The Anglo-Eire Agreement of 1938 transferred to the Irish the control of the harbours retained by Britain.

The democratic nationalism of the Irish revolutionary movement was reflected in the declaration that all powers of government and all political authority were derived from the people of Ireland. A distinctive Irish Free State citizenship was defined. Irish was declared to be the national language along with English as the official language. The constitution forbade the grant of titles of honour without the approval of the executive—a question which had often aroused grievance in the egalitarian dominions. The very first article declared the state a "co-equal member of the nations forming the British Commonwealth of Nations" anticipating the declaration of the Imperial Conference of 1926. A short bill of rights[1] was framed as in the continental constitutions, which included the right to free elementary education, and forbade generally grant of titles. Till 1930, the constitution could be amended by parliament in the ordinary way. But afterwards amendments must be approved by a two-thirds majority in a referendum. Subsequent changes *e.g.*, in 1928 and 1929, left parliament free to alter the constitution at will by simple Acts till 1937. Courts could question the constitutionality of any law. War could be declared only with the consent of the legislature.

The governor-general appointed by the crown was helped by an executive council.[2] A novel method was devised to form this body. Its president, unlike as in other dominions, was nominated by the legislature. In the original constitution, the president selected four ministers. The legislature could choose other ministers who may be outside the legislature to represent all parties proportionately These ministers, who had no seat in parliament, were appointed for a particular term and could not be removed except on charges of malfeasance, incompetence or disobedience proved before a committee of the chamber so constituted as to represent all parties. These extra

[1] Civil rights could be limited by law, and were, indeed, limited later by a Public Safety Act.

[2] H was forbidden by law to dissolve the legislature on the advice of a ministry which did not command the support of a majority of the legislature.

ministers were individually responsible for their administration to the legislature. This system was meant as a compromise between the English and the Swiss systems. But complaints were heard about the unworkability of the system, and it was laid aside in practice in 1927.

The legislature consisted of the senate and the chamber of deputies or the Dail, both being the product of popular election. The original senate embodied a novel experiment. Both chambers proposed a list of forty-eight names, voting by P. R., of all those citizens over thirty-five years who had done unique public service or who represented important aspects of the nation's life. Two-thirds of this panel was nominated by the Dail and one-third by the senate. From this panel, at a senatorial election held every third year, fourteen should be chosen by the people by P. R., the whole state forming one constituency. The voters should be over thirty. The senators should be sixty in number and should hold office for twelve years. Of the forty-eight elected, one-fourth would retire every three years. Thus, one-fourth of the senate could be renewed triennially. In addition to these forty-eight, each Irish University chose three to sit for six years. Thus, the total number was sixty. According to Acts of 1927-28, this procedure was modified. The first senate was partly elected by the Dail and partly nominated by the president. After this law, the senators were to be elected by the senate and the Dail sitting together and voting by P. R. from a panel of names. The members would sit for nine years, one-third retiring every three years. The minimum age of the candidate was reduced to thirty. In 1936, the senate was abolished.

The Dail was elected for five years by P.R. on the basis of universal suffrage. The electors should be of the age of twenty-one.

As regards powers, the senate could delay a bill only for a certain time, after which it would be declared passed. Thus, the will of the Dail ultimately prevailed after a stated time as in the Parliament Act of England. Regarding money bills, though the Senate might make recommendations, the Dail had exclusive authority. Every bill could be assented to, vetoed or reserved by the governor-general. But the governor-general should act in accordance with "the law, practice and constitutional usage" prevailing in Canada. In 1933, these powers of the governor-general were abolished.

The senate could compel a referendum on any bill except a money bill or an urgent bill by a two-thirds majority. Further, any measure objected to by two-fifths of the Dail must be put to referendum Further, one-twentieth of the electors might demand a referendum on any bill, except money bills and urgent bills. The voters could also initiate laws or amendments to the constitution. Bills might be initiated by a petitition of 50,000 voters. If they were rejected by the legislature, they should be submitted to a referendum, Constitutional amendments also should be submitted to and ratified by the people. These provisions regarding initiative and referendum were abolished in 1928 ; but the senate received a somewhat extended time to hold up bills passed by the Dail.

Contemporary ideas of functional representation found an echo in the constitution which provided for the establishment of vocational councils representing branches of the social and economic life of the nation.

The judiciary was mainly based on that of Britain. Besides the High Court, there was a Supreme Court of Appeal which could also judge the constitutionality of any law. Thus, as in U S.A., the judiciary became the guardian of the constitution. Appeals could be taken to the Privy Council only by leave of the Supreme Court. This appeal was abolished by law in 1933. The County Courts in Ireland are really connected to the county and exercise both civil and criminal jurisdiction. There are also some land courts to deal with the relations between landlords and tenants.

Before the Treaty of 1921, local government was similar to that of England. Now, there are no rural district councils. By an act of 1923, the government was empowered to dissolve any insubordinate, negligent, incompetent or corrupt local authority and appoint paid government commissioners The act also empowered local councils to delegate their powers voluntarily to a commission or to a manager.

Despite the plans of the drafters of the first constitution, a definite party system grew up.[1] All ministers had been from the beginning members of parliament and belonged to one party. The chief parties were those under Cosgrave, De Valera (Fianna Fail) and Labour.

As mentioned already, the constitution was changed in 1937 when the land was called Eire. We now pass on to this constitution. This constitution contained some Directive Principles of State Policy which were based on Roman Catholic ideas on social security as expounded by the Pope. These restrict free competition and urge care for the infirm, the aged, the widows and orphans and stress the importance of the family.

This constitution avoided all reference to the British king. The executive in the new state is a president elected by all voters for seven years. He is advised by a council of state. The president is normally bound by the advice of the prime minister and his cabinet, but could exercise in certain contingencies dictatorial powers. On a petition from certain members or parliament, he may refuse his assent to a law and subject it to a referendum. He may also refuse dissolution to any ministry which, in his opinion, has ceased to command a majority in the house. The prime minister is called Taoiseach. The legislature consists of two houses : the senate and the house of representatives. The senate is to be partly nominated and partly elected. It is to be formed of representatives of (*i*) agriculture, (*ii*) labour, (*iii*) commerce and industry, (*iv*) culture and education and

[1] Article on the party system in the *Political Science Quarterly*, Sept., 1929.

(v) administrative experience. The candidates should be nominated by the Dail and vocational bodies like the chamber of commerce, trade unions etc. by P.R. They are then elected by an electoral college consisting of the members of the Dail and members elected by the county and borough councils voting by P.R. The Hare System of P.R. was used to ensure distribution of seats to the political parties in accordance with their actual electoral strength. The party of De Valera came to power in 1932. De Valera abolished the senate because he found it obstructive. For some time, he was against the idea of a second chamber ; but public opinion compelled him to set up one. In the new senate of sixty members, eleven are nominated by the government and three elected from each of the two universities, the remaining forty-three being elected on a vocational basis. The term of membership is for ten years.

After consulting the council of state the president may refer any bill to the Supreme Court for a decision on the question whether such a bill or any part of it is repugnant to the constitution. The idea is that the president and the senate should be above party influence.

The new constitution came into force in 1937. There was no reference to the king, and the office of the governor-general was abolished. But a separate Act dealing with external affairs expressly stated that the king was authorised to act on behalf of Eire for the purpose of appointment of diplomatic and consular representatives and the conclusion of international agreements, so long as he continues to fulfil these functions on behalf of Australia, Canada, Britain, New Zealand and South Africa. This act shows that Eire had then no idea of completely separating itself from the Commonwealth. The foreign envoys, who presented credentials to the Irish government, were accredited to the king.

In 1949, this last constitutional link with the British crown was snapped by the Republic of Ireland Act of 1949. The state thus lost its connection with the Commonwealth also. The only reason for including the description of its constitution in this chapter is that its subjects are not treated as foreigners by the British government, thus giving rise to the paradox that the republic is neither a part of the Commonwealth nor a foreign country.

HISTORY OF GOVERNMENTS

PART THREE

OTHER GOVERNMENTS

CHAPTER I

THE UNITED STATES OF AMERICA

THE thirteen colonies which were on the Atlantic coast formed the beginning of the United States. The British settlers formed self-governing communities on the basis of royal charters which gave them power to regulate their own affairs. Each colony had a governor appointed by the king. Each also had its own elected assembly which made laws, levied the taxes and paid the salaries of the judges and the governors who were sent out by England. The American Revolutions in the 18th century, as a result of which these colonies became independent of England, did not mark a complete break from the old constitution. Thus, the office of governor continued. In many cases, the royal charters became the state constitutions. Legislatures on the models of the old assemblies continued. The English system of Common Law continued, and the courts continued without much change. But, Maine is wrong in asserting in his *Popular Government* that the American government was only a version of the British constitution as it might have presented itself to an observer in the second half of the 18th century. The American constitution and the English constitution, though based on a common origin, tended to differ. The American constitution was greatly modified by American surroundings. For example, though private law is mainly English, there are no class distinctions and no titles in America. The Church in America is free. Unlike the British constitution the American constitution was a conscious and deliberate creation. There were also great changes in the spirit of the government.

Originally, the 13 colonies had no unity. During the War of Independence they co-operated in a Continental Congress. After the war, a scheme of loose confederation was drawn up. The states jealously continued to retain their sovereignty. The Congress was only a body of delegates from the several states. It had only the power to make recommendations to the states. These could be disregarded by the states. There was no separate common executive and no central judiciary. The Congress had no power to levy taxes

and depended for money on the state legislatures. It had no power to regulate commerce and trade amongst the states, and, so, tariff warfare prevailed amongst these states. There was, also, disorder after the war. The Congress could not even raise an army. Thus, the confederation was dependent on the goodwill of the states, and proved inadequate. In 1787, agricultural and industrial interests urged the calling of a convention to frame a new constitution. Thus, a national convention met at Philadelphia in 1787. Washington, helped by Hamilton, urged the need for a strong centre. The members were practical men of affairs who had seen experience in local legislatures. Hence, the American constitution was not the work of theorists, but a practical instrument to deal with the actual situation. The framers had no precedents except the constitutions of England and of their colonies. The main problem of the framers was to establish a central government in such a way that it would not arouse the hostility of the states. Hence, a federal form of government was decided upon. The federal government should not depend upon the governments of the states, but should have its own officials and its own courts. On the other hand, the framers knew that the state legislatures were jealous of their rights and so provided that the states were to retain as many as possible of their old powers. Hence, the division of the powers of the government by which the federation and the states preserved their integrity and their strength. Thus, the constitution conferred on the federal government certain specific powers, delegated to it by the states. The other powers were reserved to the states. Two important leaders of the convention, Hamilton and Jefferson, differed regarding their aims and methods. Hamilton desired to strengthen the central government and had the support of the propertied classes. Jefferson was on the side of state rights and advocated extreme democracy. The convention met within closed doors for nearly five months. It was chiefly inspired by the realisation of the hopeless weakness and poverty of the confederation which had previously existed. But, the particularist feeling was strong enough to insist that the states should be left the undistributed powers of the government.

The centre controls certain functions essential to the state, like defence and foreign policy. It deals with matters of common interest like coinage, patents and copyright, naturalization, posts and telegraphs etc. It controls some matters which can be conveniently looked after by the centre, like tariffs. But, the centre was given only minimum powers and the residual authority was left to the states. The political skill of the people enabled the constitution to adapt itself to changing conditions. The modern tendency, everywhere, is towards increasing the authority of the centre, as the long-continued existence under a familiar, common government evokes closer integration of the people, and modern economic problems are no longer local, but national and even international. Thus, the centre came to control inter-state commerce and several other items not originally in its jurisdiction.

The federal government was given power to establish its own system of courts including a Supreme Court separate from those of the states and the power of raising the taxes it needed for its support. It has its own legislature—the Congress. The states derived their constitutions not from the federation, but from the people of the states. Each state had its own executive branch headed by the governor, its own legislature and its own judiciary. The American citizen would come into more frequent direct contact with his state authority than with the federal government. The states in their spheres are not agents of the federation, but are supreme in their sphere. They controlled education, local government, civil and criminal law, health, factory inspection, religious bodies, corporations, irrigation, forests, waterways, etc.

The framers of the constitution, being aware that state legislatures might raise difficulties against ratifying the constitution, proposed that the new constitution should be ratified by conventions of the different states. According to this, the constitution was ratified by conventions. Hamilton, Madison and Jay began a campaign of education of the people about the new constitution in a series of letters to various New York newspapers. This collection was called the *Federalist* which forms the best contemporary exposition of the meaning of the constitution by its framers. The constitution was accepted with some changes by conventions in all the states. To meet certain objections, ten amendments were at once passed containing a bill of rights.

The constitution was rigid, because the form of government was federal and the powers were divided. Further, many of the early Americans were keen on restricting the powers of the government in view of the Puritan tradition concerning legal safeguards against the government in the interests of their liberties. Thus, the principle of separation of powers (which Montesquieu had considered as the special glory of the English constitution) was adopted more completely than in England.

The constitution has a bill of rights to safeguard individual rights from abuse of governmental power, both of the federation and of the states. The Declaration of Independence of 1776 had asserted even before that "all men are created equal" meaning that no man should, because of his birth, have political power over others, and each man should have equal opportunities in the country. Article 1 of the Bill of Rights declared that the government should make no law restricting religious liberty, freedom of speech, freedom of the press, freedom of meeting, and freedom to petition the government regarding grievances. Article 2 guaranteed the right of the people to keep and bear arms. Article 3 lays down that military should not be quartered in any house without the consent of the owner. Article 4 safeguards security of personal property. Article 5 enacts that private property should be taken for public use only after payment of a just compensation. Article 6 provides for fair trial of accused. Article 7

guarantees the right of trial by jury. Article 8 forbids the demand of excessive fines or cruel punishments. Article 9 safeguards existing rights of the people. Article 10 leaves residual power to the states.

The number of states forming the federations was 13 at first. Later on, the United States began to expand westward. Most of the expansion was not colonisation in the ordinary sense. It was more in the nature of migration which extended from the Alleghanies to the Pacific coast. First of all, new states were created in the unallotted territory east of the Mississipi that had been granted to the United States by the Treaty of Versailles which recognised their independence.

At the beginning of the 19th century, 9/10ths of the people were cooped up in the original 13 colonies—a narrow strip of the coast bordered by the Alleghanies. The lands forming the hinterland of these colonies had been ceded by the states to the centre, and the centre began to grant lands here to the settlers. Hamilton laid down the principles of these grants. Plots were sold to the highest bidders. This led to estate speculation. Economic depression which followed the Revolution promoted emigration westward. It was only after the Civil War that the Homestead Act of 1862 allowed grant of free land to those who cultivated it themselves. This developed the Middle West. The Desert Land Act of 1877 allowed grant of lands which were useless for agriculture and for pasture. This developed the great cattle ranches of the West.

In 1803, Lousiana, west of the Mississipi, was bought from France and cut up into new states. Between 1816 and 1821, six new states arose—Indiana, Mississipi, Illinois, Arkansas, Maine and Missouri. In 1819, Florida was got from Spain. Between 1800 and 1820, the Ohio Valley had been settled. Between 1820 and 1840, the cotton states of the south expanded. Between 1840 and 1850, the Mississipi Valley above the cotton belt was settled. As a result of the war with Mexico in 1846, Texas, California, Colorado, Nevada and Wyoming were annexed from Mexico. A boundary dispute with Britain over the Canadian boundary led to Britain ceding to U.S.A. in 1846 Oregon, Idaho and Washington. In 1867, by purchase of Alaska from Russia, U.S.A. got for the first time territory which was not contiguous. Discovery of gold in California hastened the settlement of the West. There was also enormous emigration from Europe. European revolutionary movements led to several Liberals leaving Europe, particularly from Germany. Irish famines led to Irish immigration. The bulk of the settlers were, however, Americans themselves, like disbanded soldiers and those affected by depression. Laski (*American Democracy*) observes that "most of the heritage of past civilisation has gone into the making of American democracy. Europe and the Far East have alike nourished its rise and development. It had strains from the African continent which lie deep in its foundations." In spite of this, the dominant element is Anglo-Saxon. Extensive settlements were made in Wisconsin, Iowa, Minnesota, the

Dakotas and Nebraska. Had it not been for the railway, the full development of areas inaccessible by road and canal would have become impossible. The early pioneers of the West after the Revolution had struggled on foot, horse-back or waggon. The succeeding emigrants used canals and roads. But, it was the railway which stimulated emigration very much. The railway unified U.S.A. politically. This expansion avoided the problem of over-population and also attracted emigration from England, Ireland, Germany and Scandinavia from 1848. The preponderant American element in the population easily absorbed all these foreign elements.[1] By 1880, there was a continuous belt of population from ocean to ocean.[2] The Americans thus opened up and exploited their own resources. By 1890, inland expansion was complete. Hence, we find oversea expansion. This gave the Americans possessions peopled by men of different races and types. In 1898, the Philippines, Puerto Rico, Cuba, Guam and Hawaii were obtained. Cuba was not, strictly, an American possession, though it was under American protection. Later on, U.S.A. gave up most of these oversea areas.

In 1935, U.S.A. agreed to a transition period which would culminate in the independence of the Philippines in 1945. A Bill of 1916 had already set up there a Senate and a House of Representatives. In 1946, the islands became an independent republic. The constitution is modelled on America. The President is elected for four years ; but, none can serve for more than two times. The Congress consists of a Senate and a House of Representatives. The Senate is elected by the people for six years, one-third being renewed every two years. The House of Representatives is elected for four years by universal suffrage. The two main parties are the Liberals and the Nationalists. A Supreme Court is at the apex of all the Courts. It can nullify all acts of the Congress or the executive which are unconstitutional.

The people of Puerto Rico enjoyed full citizenship in the U.S.A. from 1917. In 1947, they were allowed to elect their own governor. In 1952, they set up a Commonwealth with its own constitution. The Commonwealth has a Governor, a Senate and a House of Representatives along with its own Supreme Court. It is associated with U.S.A. in foreign policy and defence, but is otherwise free. Though American federal officials are here to look after foreign policy and defence, the Commonwealth is free from federal taxation. The American Congress has no power to repeal any law enacted by Puerto Rico.

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[1] In 1924, U.S.A. began to discriminate against Latin and Slav countries in fixing the annual quota of immigrants from abroad.

[2] The first census of 1790 recorded only 4 millions. In 1840, there were 17 millions ; in 1860, 31 millions. This natural increase was helped by immigration. In 1880, there were 50 millions ; in 1900, 76 millions. In 1920, the population was 106 millions ; in 1930, 123 millions ; in 1940, 132 millions ; and, in 1950, 151 millions.

Haiti was a protectorate of the U.S.A. from 1915 and was governed by a High Commissioner. In 1933, a treaty provided for American withdrawal and in 1934 the protectorate ended. It is now a republic.

Cuba was a Spanish colony and came under U.S. control after the war with Spain. In 1901, it became a republic, U.S.A. keeping rights of intervention. In 1934, these rights were given up. But, American influence still continues. There is a President and a Congress of two houses. The cabinet is responsible to the House of Representatives. But, in actual practice, military *coups* are usual.

While Burgess and Captain Mahan believed in American imperialism as a civilising mission, there was a reaction in the 20th century. Lippman in his introduction to Theodore Roosevelt's *Colonial Problems of U.S.A.* says that the government of empires cannot be the ambition of a democratic nation. American feeling was generally against aggrandisement and domination. There was also competition between colonial products and U.S.A. products, *e.g.*, sugar from the Philippines. Bemis (*Diplomatic History of the U.S.A.*, 1936) even regarded the acquisition of the Philippines as a mistake. Nearing and Freeman call their study of American expansion as Dollar Diplomacy, bearing in mind the inseparable combination of finance and diplomacy. But, there is also an altruistic strain in the American character. This is exemplified in the establishment in 1821 of the state of Liberia in Africa. Liberated slaves from U.S.A. were settled here between 1820 and 1860. In 1847, the state became an independent republic and no white person can be a citizen. But the constitution is based on the model of U.S.A. The President is elected for eight years. He appoints the ministers who are called Secretaries. The Senate consists of representatives elected from the counties for six years. The House of Representatives is elected for six years. The suffrage depends on a property qualification, but women were given the right to vote in 1946. The House of Representatives includes delegates from tribes of the hinterland who, however, do not have the right to vote. Money bills originate in the lower chamber; but other bills originate in either house. Political parties are modelled after U.S.A. Americans have played a great part in developing the country. The name of the capital, Monrovia, is itself after the American President Monroe.

Finally, the United States comprised 48 states and certain territories. The Congress could admit new states; but, no new states could be formed within the jurisdiction of another state without its permission. The territories are under the control of the federation. In practice, the Congress admits to state right the population of a territory which is considered fit to exercise self-government under specific conditions. Hawaii and Alaska, which continue to be territories, have a governor and a legislature. They have voted for state-hood and their applications are pending before the Congress. If they are admitted, the number of states will be fifty.

One delegate each from Puerto Rico, Hawaii and Alaska are present in the United States Congress where they can speak but cannot vote. The district of Columbia where the federal capital, Washington, is situated is neither a state nor a territory, but is directly under the control of the federal government.

One great convulsion agitated the fabric of the state within a century of its foundation. This was the American Civil War (1861-1865).

In spite of certain social distinctions brought in from England, the essential equality of conditions in the colony led to the unimportance of these distinctions. The aboriginal Indians withdrew before the settlers whose constant struggle with nature developed strength in body and character. But, scarcity of labour led to the extensive development of slavery. Agricultural problems differed between the north and the south. England, anxious to free herself from dependence on materials like tobacco from Spain or sugar from Holland, developed large plantations to grow products not produced in England, both in the south and the West Indies. Negro slaves who were imported from Africa were worked under white overseers hired on indenture. Cotton soon displaced tobacco as the main crop of the south. It may be noted that the need for new land for cotton growing led U.S.A. to widen her boundaries to include Texas and the regions to the south-east. By 1860, the cotton belt stretched from the Atlantic to Texas across the south. This made slavery important in the economy of the south. In the north, the population was concentrated in townships, unlike the south where the population was scattered in the great plantations. While the north made great advances in industry, manufactures, agricultural improvement and trade, the south remained stagnant. By 1860, two-thirds of the population and a still greater part of the total wealth was concentrated in the north. But, slavery was not important here. Of the 22 states, 11 were "free" and 11 were "slave". The southern states became nervous about the further growth of the 'free' states. The election of Lincoln, confirmed opponent of slavery, as President, widened the breach. Hence followed the Civil War. The north was numerically dominant. It had a strong industrial position. It controlled all shipping and cut off the export of cotton, the staple product of the south. The south also depended for its food on the north. Hence, the north won. The end of the war saw the end of slavery. The war also welded together the economies of the north and the south.

Though slavery was abolished, several states of the south evaded the grant of legal rights to Negroes. Negroes form a substantial part of the population of the south. Vigorous efforts have been made by leaders like Booker T. Washington to educate them along efficient lines and make them more competent in all walks of life. Much has been done to improve them. In 1954, the Supreme Court declared educational segregation practised in the south as

unlawful. Brogan notes (*An Introduction to American Politics*) that Negro political power has increased in many states.

Constitutional amendment is difficult. The change must be proposed either by a two-thirds majority of both houses or on the application of the legislatures of two-thirds of all the states. The change should be ratified by the legislatures of three-fourths of all the states, or, as an alternative, by conventions in three-fourths of the states. In actual practice, only the method of ratification by legislatures has been employed. In all, there have been 22 amendments so far. Immediately after the constitution was drawn up, ten amendments were passed providing for a bill of rights to meet objections. The most important amendments after this were the 13th, 14th[1] and 15th amendments granting rights to the Negroes after the American Civil War. Later amendments altered the election of senators and gave power to the federal government to impose an income-tax. The 18th amendment of 1919 enforced prohibition ; but, this was repealed in 1933. Women suffrage was granted by the 19th constitutional amendment in 1920. The President's term was limited to two terms by the 22nd amendment in 1951. Each of the 48 states has, in its constitution, a separate bill of rights, securing for the citizens all the essential rights.

Wilson in his *Congressional Government* remarks, "The constitution itself is not a complete system.....It does little more than lay a foundation of principles. It provides, with all possible brevity, for the establishment of a government having, in several distinct branches, executive, legislative, and judicial powers. It vests executive power in a single chief magistrate, for whose election and inauguration it makes carefully definitive provision and whose privileges and prerogatives it defines with succinct clearness ; it grants specifically enumerated powers of legislation to a representative congress, outlining the organization of the two houses of that body and definitely providing for the election of its members, whose number it regulates and the conditions of whose choice it names ; and it establishes a Supreme Court with ample authority of constitutional interpretation, prescribing the manner in which its judges shall be appointed and the conditions of their official tenure. Here, the constitution's work of organization ends, and the fact that it attempts nothing more is its chief strength. For it to go beyond elementary provisions would be to lose elasticity and adaptability. The growth of the nation and the consequent development of the governmental system would snap asunder a constitution which could not adapt itself to the new conditions of an advancing society. If it could not stretch itself to the measure of the times, it must be thrown off and left behind, as a bygone device ; and there can, therefore, be no

[1] Art. 14 declared that no state shall make or enforce any law which shall abridge the privileges and immunities of the citizens of the U.S.A. Art. 15 declared that the rights of the citizens to vote shall not be denied or abridged by the centre or the states on account of race, colour or previous condition of servitude.

question that our constitution has proved lasting, because of its simplicity." The brevity of it made an elastic interpretation possible. Bryce also remarks that the constitution ranks above any other written constitution in its simplicity, brevity and precision of language. He laments the recent practice of crowding a multitude of details into the state constitutions. The original basis of the constitution was a balance of power between the centre and the states. But, the country became more and more unified socially and economically by development of communications and development of large-scale industry. A common historical inheritance has developed a distinct American spirit which has lessened the sharpness of the sectional differences in the various parts of the country. Hence, the national government has tended to assume broader powers, and the federation now legislates on many matters formerly controlled only by the states. For instance, while education continues to be a state matter, the federal government exercises some supervision through financial aid. This trend towards centralisation is visible in all federal systems of the world. The process by which the federation has assumed the new powers has been varied. In addition to specific grant of such powers through constitutional amendments, many powers were derived by judicial interpretation and by usage. This was possible, because America did not attempt to define in detail what was federal and what was local. As Munro points out in his *Government of the United States,* America demonstrated to the 19th century that federalism did not necessarily mean weak government and in the 20th century that a federal democracy can be capable of great military power and efficiency.

In the view of Dicey, all features of federalism are seen in their most perfect form in the constitution of U.S.A. : 1. It is the matured form of an earlier looser connection based on common interests. 2. It combines two sentiments which are, to some extent, inconsistent with each other—desire for unity and resolve to maintain autonomy. Hence the elaborate division of powers of government between the centre and the units. 3. Supremacy of the constitution is guarded by courts of law. "The power of the courts, which maintains the articles of the constitution as the law of the land and thereby keeps each authority within its proper sphere, is exerted with an ease and regularity which has astounded and perplexed continental critics." Dicey considers this as an example of the way the founders of the Union applied with extraordinary skill ideas of English law and procedure to new circumstances.

The conditions necessary for federalism were present : 1. Geographical contiguity. 2. Community of language, culture, religion, interests and past historical association. 3. A feeling for union, but not for unity. The states were anxious to maintain their autonomy. 4. Political competence. Federal government has been considered the most difficult of all governments and can flourish only amongst communities which instinctively respect the law, as the judiciary is very important and decides all important questions.

Bryce comments on the importance of traditions in the working of public life.

A federal government is something like a contract, and the constitution contains the agreement defining the powers of the centre and the units. As Dicey points out: 1. It must necessarily be written so that the terms of the agreement might not be open to any misconstruction. 2. It must be rigid. The ordinary legislature should be unable to change the guarantees made to the units. Marriott (*Mechanism of the Modern State*) notes that rigidity was necessary in the constitution, because it was in the nature of an international agreement devised to satisfy the jealousies of the states. This rigidity also impresses on the minds of the people that the provisions in the constitution are immutable. Bryce (*Modern Democracy*) comments on the principles of liberty and order in a rigid constitution like that of U.S.A.: 1. The doctrine that the people formed the supreme law-giving authority. 2. Certain rules are placed beyond the reach of temporary impulses springing from passion or caprice. But, as Munro (*Governments of Europe*) observes, much depends on the nature of the provisions of the constitution, whether it concerns itself with rigid enumeration of details, thus inviting constant change, *e.g.* the constitution of California had been more often changed than that of Britain. Much also depends on whether the people are conservative or unstable. Bryce (*Modern Democracy*) thinks that the light-hearted readiness to alter the constitution which he recently observed indicated a decline in the American veneration for the time-honoured constitution. But, this could be ascribed to the decline of the old feeling of *laissez-faire* and the philanthropic demand for social welfare. Willoughby points out (*Government of Modern States*) that too much rigidity in defining individual rights, as in U.S.A., besides causing much litigation, has tied the hands of the state in introducing social reforms urgently demanded by circumstances. A broad guarantee of individual rights, as found in Switzerland, enables the state to introduce such definitions and restrictions as experience shows to be essential in the public interest.

MacIver (*Modern State*) also notes the interesting fact of inevitable integration in the federal state and the inevitable decentralisation in the unitary state which tend to approximate them in character to each other. Dicey himself recognised the tendency to centralisation. He remarks, "Federalism, when successful, has been generally a stage towards unitary government. The U.S.A., as they now are, have been well described as a nation concealed under the form of a federation." Further, no constitution is ever final and unchanging. Horvill (*Usages of the American Constitution*) points out conventions that have grown up like the system of the President's cabinet. The constitution contemplated a process of indirect election of the President by independent voters. It was thought that vesting the power of election in the hands of a small body of capable and intelligent men would avoid the popular tumult and partisan feelings

incidental to direct election. The distribution of the electors on a territorial basis was meant to offset undue influence by thickly populated regions. Hence, the electors corresponded with the senators and representatives of each state in number. In practice, however, the process has become different and the election is by instructed delegates of the parties. Subtle and gradual changes have modified the rigidity of the constitution. The Senate has ceased to be a diet of plenipotentiaries. The doctrine of "Implied Powers" has increased the power of the centre. Party organization harmonised the centre and the states.

The most serious difficulty in federalism is the division of allegiance which may make the loyalty of the citizen to his native state conflict with his loyalty to the federation. As a matter of fact, Hamilton and Madison (*Federalist*) argued for dual sovereignty in the American State, *i.e.*, that the sovereignty is divided between the centre and the unit. Calhoun denied it. Daniel Webster, the orator, and his contemporary, Chief Justice Marshall, differed from Calhoun. Tocqueville, the generality of American writers and Bluntschli also believed in this theory of dual sovereignty. But, the American Civil War killed this theory. As Willoughby points out, this view is based on a confusion between state and government. The formerly independent units had surrendered their independence and they exist now only as recreated by the centre. They have no political status outside the federation. Sovereignty in the federal state resides neither in the centre nor in the units, but in the state itself. Some writers even criticise the use of the term *Federal State*, as only the form of the government is federal. But this term has come into usage. The expression *Non-Sovereign State*, though used by Jellinek, is, however, a contradiction in terms.

The constitution delegates special and closely defined powers to the executive, legislature and judiciary. The President has definite rights on which neither the legislature nor the judiciary can encroach. The Congress is assigned a limited sphere of legislation in which it is independent. So also, the judiciary has its own powers. The fundamental rights listed in the constitution mean further restrictions on both the federation and the units. The state legislatures are also subjected to the constitutions of the states. Contrast the indefinite powers left to state legislatures in Australia. Bryce (*American Commonwealth*) remarks that it has been truly said that "nearly every provision of the federal constitution that has worked well is one borrowed from or suggested by some state constitution ; nearly every provision that has worked badly is one which the constitution, for want of a precedent, was obliged to devise for itself".

The executive power is vested in a president who is elected for four years through a special process. According to the constitution an electoral college of members was to be set up in each state by direct vote of the citizens in the state. The idea was that the choice must be made by persons better qualified than the masses and that the

electors would make their own decision in electing a proper man as president; but this happened only for the first five presidential elections. In 1808, one of the parties decided that the choice of the party for the president should bind all the electors nominated by the party, and the other parties adopted this principle. Thus, the indirect election really became direct, because the election is decided by the voters when they vote for the electoral colleges.[1] Each state has as many electoral votes as it has members in both houses of the federal legislature. Thus Nevada, which sends two senators and one representative, would have three electoral votes. New York, which has two senators and 45 representatives, would have 47 electoral votes. Each party puts forward its candidate for the presidentship.[2] The individual votes cast for these candidates are totalled in each state. The candidate who secured the majority of the votes gets all the electoral votes of the states. A candidate who obtained a majority of the electoral votes of all the states wins the election.

The President can be re-elected. Hamilton in the *Federalist* argued in favour of re-eligibility. But, a tradition developed against a third term. It was broken by President Roosevelt who was re-elected a third term in 1940 and a fourth term in 1944. A constitutional amendment of 1951 limited the period to two terms. The President must be 35 years of age and resident in the U.S.A. for 14 years. A Vice-President is elected at the same time and in the same manner as the President. He presides over the Senate; but, otherwise, his office is not important. The constitution does not mention ministers; but, in usage, there are ten heads of departments appointed by the President subject to the veto of the Senate. These ministers are individually responsible to the President, not collectively. Nevins (*America in World Affairs*, 1941) shows that the relation of the President to his ministers varies. President Wilson treated his Secretary of State, Lansing, like a clerk. Roosevelt worked as a team with the Secretary Cordell Hull.

The executive is not responsible to the legislature except for the fact that the President may be impeached; but, this does not happen. The President has independent authority, as he is appointed by the people and is answerable to them. The theory of separation of powers was taken to mean that the executive never meets the legislature. Hence, ministers do not sit and vote in the legislature. But, by convention, they can appear before committees of the Congress. The heads of the ten departments which had grown up one by one to meet new conditions, form a cabinet which is not recognised by the law as in England. The President usually selects them from his own party. The State Department looks after foreign policy. Other departments like that of the Treasury, Commerce, Agriculture, Justice, Labour etc., deal with those affairs. The three service

[1] See Strong, *Modern Political Constitutions*, for some remarks on this.

[2] The nomination of the candidate and of the electors takes place in the National Convention of the parties held six months before the official date of election.

departments of Defence are subordinate to a department of National Defence set up in 1947. The Department of the Interior looks after irrigation, natural resources and power. One department looks after health and education. Unlike as in England, the President is not bound to accept the dicisions of the ministers. Besides these departments, there are several branches of Federal Administration like the Federal Commission set up from time to time by the Congress like the Inter-State Commerce Commission set up in 1887, Tariff Commission, National Labour Relations Board, Atomic Energy Commission etc. The heads of these are not members of the cabinet. The President settles disputes between the departments. He himself selects the ambassadors and his personal representatives for special missions. In foreign policy, treaties made by the President must be ratified by the majority of the Senate. The President has no power to dissolve the Congress. Hence the tenure of the Congress is called 'astronomical'. The President is the Commander-in-Chief of the defence forces. He appoints all the judges of the Supreme Court and exercises the right of pardon except in cases of impeachment. Unlike as in England, the influence of the legislature on the executive is confined to criticism, debates on budget estimates and enquiries by committees. Hence, Bagehot made the misleading remark that the Congress was only a debating society. The President can veto a law passed by the Congress. Though this veto could be overridden by a two-thirds majority of the legislature, this makes the President wield a greater influence on the legislature than what he had originally. As Beck remarks (*Constitution of the U.S.A.*), "The Congress, unless by a two-thirds majority, cannot make any law which the President disapproves." There is also the "Pocket Veto", according to which the suspensive veto of the President can become absolute, if the President does not sign the bill within ten days and meanwhile the Congress adjourns. The bill then lapses. Further, owing to the complex economic and social factors which have developed, the Congress has been forced to agree that minor details of the laws should be regulated by the "Executive Orders" issued by the President.

Maine (*Popular Government*) and Bryce (*American Commonwealth*) derive the office of the President from the British king, George III, deprived of certain powers. Fisher (*Evolution of the American Constitution*) denies this and says that the model was the colonial governor. We may regard both as the model.

In a responsible type of government, the attendance of ministers in the legislature keeps it informed on the questions with which it has to deal and makes the ministers also heedful of parliamentary criticism. But, the presidential type of government concentrates responsibility and power on the executive, as it could not be dominated by the legislature. Ministers need not spend valuable time and energy in discussions in Parliament. One defect is the danger of deadlock between the executive and the legislature. The fact that President Wilson's foreign policy was rejected by the Congress shows that the President's policy depended only on the weight of his

personality. Dicey remarks that cabinet government has saved England from those conflicts between the executive and the legislature which, in U.S.A., have impeded the proper conduct of public affairs. Further, in countries like South America where the American model was adopted without its spirit, the importance of the office of the President has made times of election tumultuous and often lead to revolutions.

Wilson tended to exalt the powers of the President. On the other hand, Goodnow questioned this and asserted that his powers are limited by the constitution. But, during a war, his power is certainly dominant. A recent tendency during and after the Second World War is that the President takes care to associate the Congress with American programmes of international action, and members of the Congress are often included in U.S. delegations. The Congress has also shown a tendency to interfere with administrative policy by extending the investigating power of its committees to include trial and punishment. These investigation tribunals in President Eisenhower's administration invaded even the functions of the executive in the pursuit of an anti-communist hunt.[1]

A convention has grown up under which the President presents to the Congress a legislative programme (including the budget). He can, also, by means of the wireless and television, appeal to the people over the head of the Congress, and present his plans to the people in a press conference.

The legislature or the Congress consists of two houses—the Senate and the House of Representatives. The United States invented the plan of forming two houses, one to represent the country on the basis of population and the other to represent the states as equal, autonomous communities. It was this which made a federation workable.

The Senate was till 1913 elected by the state legislatures. But, by a constitution amendment of that year, the senators are now chosen by direct popular vote. The Senator should be 30 years of age and must be a resident of the state which he represents. Each state, regardless of size and population,[2] elects two senators for a

[1] Strong prefers to call this type of government as "Fixed Executive", as a "Presidential" Government need not have a President as the head, and a government headed by a President need not be "Presidential". Some other writers call this type of government "Congressional". See, also, article "The President of U.S.A." in the *Calcutta Review*, November, 1936.

[2] Under this system, the U. S. Senate is made up of 96 members, two from each state of the republic. Neither the geographic size of a state nor the size of its population affects its number of Senators. Thus, while the state of New York has the largest population, it still has but two senators, as has the smallest state in population, Nevada. The state of Texas, with the largest area of any state, and Rhode Island, with the smallest, have an equal number of senators and, therefore, an equal voice on all matters coming before the Senate.

term of six years. The Senate is never dissolved, but, one-third of the senators retired every second year. So, it is permanent.

Considering the size and population of the United States, the Senate is the smallest of the Second Chambers of the world. This, to some extent, accounts for its efficiency. It is the strongest feature of the constitution. Bryce considers it the most original part of the constitution and its model has also influenced other countries. It is composed of older and more experienced members than those of the House of Representatives. Longer term of office, continuity and wide powers attract to it the best political talent in the land. It is also better organised. It is given important executive powers in the matter of approving treaties and appointments made by the President. The constitution seems to have planned joint activity in foreign policy by the Senate and the President. But, the main responsibility has passed to the President. Still, the Senate can act decisively at times. It thwarted President Wilson and kept U.S.A. out of the League of Nations. It has equal powers with the House of Representatives in finance and legislation. But, revenue bills originate in the Lower House. In case of disagreement between the two houses, the proposal is referred to a conference of committees of both houses. Unless there is complete adjustment of differences, the bill fails. The Senate can form also a High Court of Impeachment. It can remove by a two-thirds majority any civil officer impeached by the Lower House. Laski shows that voting in the Senate is now, not according to the feeling of the states, but by party lines. Bryce criticises the Senate thus : "Jealous of its powers and moved by partisanship, it has often allowed its powers to be misused by senators who care more for the interests or demands of their own states than for the common good. It is moved in legislation and finance by considerations of temporary expediency." He thinks that it does not impress by intellectual powers. Men of ambition, energy and practical capacity are attracted by non-political careers, and, so, striking personalities are few. The party machine counts party loyalty more than personal ability. The judgment of Bryce in his *Modern Democracies* about the power of the Senate to approve treaties is also not favourable. Haynes (*The Senate of U.S.A.*, 2 Vols., 1938) traces the historical development of the Senate from 1787 and considers it a chronic irritant to the executive. His sympathies lie with the President. These judgments are too extreme. The Senate has done useful work in its enquiries into real or alleged abuses and scandals. Brogan reminds us (*An Introduction to American Politics*) that the generality of Americans do not favour close harmony between the executive and the legislature.

The House of Representatives is elected for two years by all citizens of 21 who are qualified to vote for their state legislatures. Because of this, there are great variations in the franchise. Some states impose a residence qualification. Some prescribe payment of taxes, and some ability to read. In some states, the constitutional provision that no person is to be excluded from the vote because of

his race is evaded by complicated provisions regarding franchise designed to exclude Negroes. Each state has representatives according to the population as determined by the decennial census. Candidates must be of the age of 25 and over, resident in the state and must not be office-holders. Territories elect delegates who may speak in the house but have no vote.

When a bill is introduced, it is referred to the appropriate standing committee of either house, as in France, before its principle is discussed by the house. The excessive number of standing committees has been cut down by the Legislative Reform Act of 1946. Joint committees of both houses are often set up. The committee does all the preliminary work, calls for witnesses to get further information and can amend the bill. If it is satisfied, it will "report" the bill with its recommendations to the house. The President may recommend a bill to the Congress, but has no power to compel the Congress to consider it. Any citizen or a group of citizens may submit a bill through his representative in the Congress. Congressmen themselves may originate a bill. Ministers have no responsibility for piloting bills. The bill must be passed by a majority in both houses and then signed by the President. Money bills must originate in the Lower House.

Till 1921, there was no unified budget system. The departments prepared their estimates which were then sent to the committees of the legislature which did their work independently. This unsatisfactory procedure was changed by a law of 1921 according to which the estimates are to be sent to a Director of Budget who consolidates the estimates into one document, prepares a list of estimated receipts and expenditure and sends these to the legislature with his recommendations. The committees on appropriations in both houses consider these proposals through sub-committees and prepare the necessary bills. The Senate has equal authority with the Lower House. But even now, responsibility is not concentrated. The executive government may be powerless to prevent possible extravagance, as items of expenditure may be increased. Tax proposals may also be scaled down. The President cannot veto particular items of a bill, but only the bill as a whole. So, he has necessarily to agree to a bill with which he is not satisfied. Contrast England where the House of Commons can decrease items but cannot increase them, and where the government in practice is able to force through their proposals. Further, in England, the bill is sent to the committee only after approval by the House. In U.S.A. bills on which committee members have bestowed care and time may be ultimately rejected or shelved.

As mentioned already, the veto of the President can be overridden by a two-thirds majority in both houses of the Congress. But in general, such deadlocks are avoided if there is party agreement between the President and the Congress. Laski (*American Presidency*) takes an adverse view of separation of powers, which, according to

him, confuses or destroys responsibility in U.S.A. But, Griffith (*The Congress*) thinks that separation of powers fixes responsibility. The legislature can hold the executive responsible for all its actions and need not follow its lead. The need for senatorial confirmation of appointments and treaties makes for previous consultations between the executive and the legislature. Further, the Congress has now an adequate staff of experts to advise it. These experts, whose appointments began in 1926, can analyse and report on the proposals of the executive. Dr. Griffith is against all proposals to link the executive and the legislature.

After the War of Independence, there were two parties. The Federalists, led by Hamilton, favoured a strong government. The Republicans, led by Jefferson, emphasised individual rights. The latter soon became dominant, adopting what was popular in the Federalist programme, and the Federalists died out In the time of President Jackson (1829-1837), there grew up a new party, the Democrats, who favoured extreme individualisim. But, the differences between the two parties became less marked, and they became distinguished only by their organization. Still, there is some difference in programme and regional strength. The southern states are traditionally Democratic. The Democrats are against imperialism, and the power of big capital and favour social welfare. Republicans are backed by great financiers and dislike too much state interference. Both agree generally in foreign policy. But, unlike England where an issue forces an election, here, at times of elections, the parties are sometimes forced to search for an issue. Hence, party lines are less distinct. There are conservatives and progressives in both parties. Thus, the conservative Democrats voted with the Republicans for the Taft-Hartley Act of 1947[1] which restricted the right of Trade Unions. Party platforms of the same party differ from state to state and from the national platform of the party. The voters vote, not so much by party tradition, as by their views on the particular issue. Hence, it occasions no surprise when a state sends one Republican and one Democratic Senator to the Congress. The voters and candidates often exhibit much independence. On issues of national or international importance, both parties frequently co-operate on a bipartisan basis in what they believe to be the national interest.

The absence of a strong Socialist party is due to the fact that, while workers are eager for improving conditions of work, they do not want Socialism. The tradition of pioneering of the olden days, when the vast territory and resources of the country offered opportunities to individuals to rise quickly, and absence of class distinctions as in Europe fostered individualism. The Communist party is small. A law of 1954, while not declaring it illegal, deprived it of all legal

[1]Improper political action by labour groups led to the Taft-Hartley Act of 1947 which imposed restrictions on strikes and lock-outs.

rights. The two great labour organizations,[1] the American Federation of Labour and the Congress of Industrial Organizations, are both anti-Communist.

Goodnow (*Politics and Administration*) suggests certain causes for the elaborate organization of the parties[2]: 1. Harmony between the executive and the legislature (broken by the extreme separation of powers) is secured by this extra legal organization of parties. 2. Because of extreme division of powers, state officers are free from central control. Harmony between the federation and the states is secured by party organization connecting the centre and the states. 3. Large number of elective offices and frequency of elections, owing to short terms of office, helped to strengthen party organization. But, over-organization has led to evils, many of which are described by Bryce who devotes 23 chapters of his *American Commonwealth* to deal with American parties. Party "bosses" make use of ignorant voters, many of whom are foreign immigrants, and often purchase votes. They have their "rings" controlling the party machine which they use for selfish and improper ends, *e.g.* the "Tammany Hall" of New York.

The constitution requires the representative to be an inhabitant of the state ; but, convention requires that he shall also reside in the district which he represents. Contrast England. Bryce (*American Commonwealth*) criticises this system. "The mischief is two-fold. Inferior men are returned, because there are many parts of the country which do not produce statesmen.... Such men are produced chiefly in the great cities of the older states..... As such men cannot enter from their place of residence, they do not enter at all and the nation is deprived of the benefit of their services." The system is criticised also by Laski and by Ford (*Representative Government*). Gross (*Legislative Struggle*, 1954) contrasts the nominations to the Congress with the system in Britain In Britain, the central party organization selects the candidates. But, in U.S.A. local parties do this work, and hence local bosses tend to be dominant.

The scheme of party organization is based on the units of the primary and works through the conventions of the district, the state and the nation. A hierarchy of committees radiate from the national to the local unit.

The parties are simply federations of state organizations held together loosely for winning elections. Hence party platforms change according to circumstances and no consistency is possible. No sooner

[1]The American Federation of Labour was formed in 1881. The Congress of Industrial Organizations, led by Lewis, split off from it in 1935. The former accepted Capitalism and wanted only good terms for its members. It was a loose group of trade unions without any proper co-ordination, and limited to skilled workers. The latter included unskilled workers and was more extreme. The two agreed to merge into a federation by 1955.

[2]For some useful observations on the development of the party system, see Brogan, *An Introduction to American Politics*, Chap. 2.

has any administration settled itself than the shadow of the next election appears to divert its attention. There are many conflicting interests strongly entrenched—groups of legislators, industrial or labour interests or state representatives. Bryce (*Modern Democracy*) considers that many of the legislators are inferior in knowledge and intelligence to their constituents.

The "primary" selects the candidate of the party ; nominates the delegates for the party conventions and appoints a committee to take charge of party work in the locality. The abuses which resulted were fraud in preparing the roll of party men and use of force and fraud in the conduct of business. Thus, the party "boss" converted the primary into his "ring". To reform this, in many states, the party primary election was converted into a public election in which the citizens should be entitled to vote for the selection of the party candidates, for selection to party conventions and selection of local party committees. Thus, what were purely private associations were recognized by law and regulated. Steps were also taken to prevent corruption, fraud and violence. In many states, intermediate party conventions were abolished and there was left only the primary and the national convention of the party. The national convention, held once in four years, is supreme and decides important issues like the choice of the candidate for the Presidency. Standing committees look after the actual working of the party.

There is a system of Federal Courts. These courts have an independent federal machinery to enforce their decrees on the citizens without the need of invoking the help of the states. Contrast Canada which has only one set of Courts. Australia has a separate Supreme Federal Court, but invests State Courts with federal jurisdiction. The lowest Federal Court is the District Court, each state forming one or more districts. Above this is the Circuit Court of Appeal in the division called the Circuit. The highest Federal Court is the Supreme Court which sits at Washington. It has nine judges and a Chief Justice. The judges are appointed by the President with the consent of the Senate and hold their office on good behaviour. The Court hears appeals from the decisions of subordinate federal courts which deal with the ordinary law of the Union, and also from the Supreme Courts of the States on interpretation of the constitution or acts of Congress. It decides whether a law passed by the state legislature or the federal legislature is opposed to the constitution. If it is, that law is declared void. Thus, it is the ultimate arbiter of all matters affecting the constitution, and thus it safeguards the constitution. Marshall, the fourth Chief Justice (1801-1835), made two great contributions to the Supreme Court. In the case of Maddison *vs.* Marbury (1803), for the first time, he declared an act of the Congress unconstitutional. Thus, the Supreme Court stepped into the position of the guardian of the constitution, a position not originally given to it. Secondly, he also increased the power of the federal government by asserting the doctrine of "implied powers" which enabled the centre to extend its jurisdiction. The Supreme

Court also hears disputes between states and between the state and the federation.

The Supreme Court has been called the "Master of the Constitution". But, note that it can never initiate. It can act only when a case is brought before it. The decision does not repeal the law. The Court simply refuses to apply it, as, in its view, it is not valid. The law is then either repealed by the legislature, or falls into disuse through non-enforcement. So its work is purely judicial and cannot be strictly called a veto. This position of the Supreme Court helped national unity ; but, the defect was that necessary social changes could be delayed. Further, as in England, judicial decisions become precedents. Thus, a good part of the law is "judge-made". Discontent at being tied to judicial precedents which may not fit in with the existing order has led to the growth of a new school of jurisprudence in U S.A. which has influenced some great American judges like Holmes and even writers like Maitland in England. These favour that the highest court in the land should quash a precedent proved to be unsound or unsuited to the times. It is also suggested that, instead of waiting for a judicial decision about the validity of a law in some future suit, it would be helpful to private citizens and the government to settle the dispute in advance, *e.g.* in some of the American states and in Canada, the executive can obtain opinions from the judiciary.

It is noteworthy that Hamilton had argued from the beginning that the constitution was supreme over statute and that the judiciary had the right to interpret and enforce the constitution as against the legislature. This principle of "judicial review" rapidly progressed after the Civil War. While it has led to deep respect for the constitution and checked hasty changes, it, at the same time, furnished an elastic device to adapt the constitution to new conditions, *e.g.* expansion of the powers of the federation. The criticism that the courts, because of the conservative and narrow spirit of legal thinking, may not properly decide questions in social and economic affairs which are rapidly changing, is to some extent met by the fact that the judges are also influenced in mind by the prevalent public opinion and by new social standards when public opinion is strong. Thus, the fear that the courts may adopt a too narrow interpretation and stop national progress has been found unsound.

The decision of the Supreme Court is without appeal. But, it is not sovereign. Judges can be impeached. Further if its decisions are persistently against the opinion of the ruling party, it is possible for the government to appoint to the court lawyers who share the opinions of the ruling party. The argument that the court would be powerless if defied by a state or if it is not supported by the federal executive is academic, for the success of the American Federation is due to the fact that the people of the U.S.A. are used to deep reverence for law and justice.

The experience of U.S.A. has, however, shown that rights declared

in a constitution are not necessarily better protected than in England where they depend on tradition. Thus, though the fifth and fourteenth amendments of the U.S. constitution guaranteed the citizens against deprivation of life, liberty and property except by "due process of law", this phrase was vague. Willys (*Constitutional Law of the United States*) remarks that the phrase means, what the Supreme Court says it means. Many southern states were able to discriminate against the Negroes. That is why the framers of our Constitution used the phrase "procedure established by law" in Article 21 which guarantees life and liberty. This phrase leaves the discretion to the legislature instead of to the court.

The States are guaranteed by the constitution a republican form of government, protection from foreign invasion and help to suppress internal disorder, if request was made by the states. The federal government exercises authority over the citizens of every state directly on matters within its sphere. The federation exercises concurrent powers with regard to a few subjects like bankruptcy and, in these spheres, a law of the state can be overridden by the federal law. There is a national army controlled by the federation. But, each state is allowed to have a militia. State constitutions have gone much farther than the centre in making immutable any rule thought important. Each state has its own government. There is a governor who is elected by the direct vote of the people of the state. This leads to perpetual party intrigues. His term of office varies from state to state. The qualifications for this post and the powers of the governors also differ in the different States. The governor has less power than the President. He lacks the prestige connected with the President. His power of patronage is not great, because the chief officials of the state are also elected. His control over the administration is also interfered within many states where the referendum, the initiative and the "recall" exist. The Senate has the right to veto the appointment of governors and also acts as a court of impeachment.

The legislature of the state consists of two houses. The state can deal with all matters not reserved for the federal government or removed from its control by the constitution of the state itself. Provision is made in some states for direct legislation by the people through the referendum and the initiative and for "recall" of officers. The system of "recall" has been said to create in officials a servile spirit and weaken executive authority. But, sometimes, it has removed corrupt officials. Writers are divided about its merits and defects. The fixing of the term of office of the governor as two years in several states leads to inexperience of the executive and frequent elections are disturbing. Though election is bad in principle, the detailed provisions in the state constitutions which curb discretionary power remove risks.

Owing to frequent delay and deadlocks, many states have shown a tendency to adopt unicameral legislatures, *e g.* Nebraska adopted it in 1934. But, many state legislatures have been discredited by

corruption. Members enter into secret bargains for pushing their bills through (Log-rolling). Instances have been of unscrupulous introduction of bills against rich corporations to extort blackmail. The party "machine" is often the ally of money power. Pressure-groups resort to "lobbying" (meeting the legislatures in the lobbies). Powerful organizations maintain "lobbyists" who render various favours to the legislator. The range of private organizations using pressure, cited by Gross (*The Legislative Struggle*, 1954), is extensive, and the most powerful of them are connected with agriculture and business interests. At every level of legislative process, lobbying and party pressure based on local interests plays a great part, sometimes checking the progress of the bill and sometimes quickening it. Bryce was alarmed at the sinister pressure exercised by organised groups in politics. "Graft" appears when these groups, by helping party "bosses" with money, can secure legislation favouring their interests. The close connection between parties and business interests leads to "graft". The connection of the party and the criminal underworld in big cities leads to various "rackets". But, in spite of these defects, the existence of pressure groups is now recognised to be inevitable in modern democracy. Such groups include not merely business interests but also labour and professions. Bone remarks (*American Politics and the Party System*), "In assaying the influence of organized pressure, one must remember that counter-pressures are formed which provide an antidote. Pressure-groups beget pressure-groups and help to cancel out, to some extent, the influence of each other."

One other evil which developed from the party system was the "Spoils" system, helped by the system of decentralised administration and the large number of officials needed. According to this, all appointments become rewards for help in elections. Unlike Britain where the administrative class is recruited mainly on the basis of general ability, in U.S.A. the chief criterion is specific qualification for the particular post. This has led to abuses. In consequence of this, the Civil Service Act of 1883 allowed lower grades of civil servants to be chosen by competitive examinations. But, the more important officers are still subject to patronage though there is now a permanent Federal Civil Service. The "spoils" system still survives in some states.

Local government was originally modelled on English local government. But, unlike England, local government here is symmetrical, because America was free from the past historical circumstances which shackled England.

There are three main types in American local government. (1) In the New England states, the lowest unit is the Township which is a rural community and should not be confused with a town. Here, a primary meeting of all the citizens elect local officials for the year and decide all local matters. (2) In the Southern States, the unit is a big area called the County whose officials are elected by the people of the county. The township is subordinate. (3) In the

Mid-Atlantic states, there is a type between the other two. Financial condition of many local bodies being unsatisfactory, consolidation has taken place in some areas, *e g.* in Tennessee, two counties were combined into one, and in Georgia, three counties were combined into one.

In some local areas, the franchise is based on residence, property or eductional qualifications. Some use the referendum, initiative and "recall" of officials.

The city organization differs.[1] The big cities are governed by elected corporations, based on charters. In most cases, cities are under the counties. But, in some areas like Virginia, they are independent. In certain areas like New York, the town itself forms a county. The mayor, who is paid, is directly elected by the people. Usually, the corporation includes aldermen. Many cities suffered misgovernment under party "bosses"; supported by the votes of ignorant foreign immigrants. Reform was accomplished in three ways: 1. The powers of the councils were lessened and of the mayor increased. 2. People elected Commissioners who were paid and looked after administration for a definite term. This Commission had all administrative and legislative power. But, this led to friction, as responsibility was divided amongst the Commissioners. 3. In many other cities, there is the system of City Managers. Policy is laid down by a small elected council on commission, and the actual administration is through a paid officer called City Manager elected by the council.

In the first and third systems, the "machine" was often able to slip back into control by making use of the mayor or the city manager.

There is a series of state courts, both civil and criminal. The lowest courts in each state are those of the Justice of the Peace and the highest is the Supreme Court. The judges are usually elected for a fixed term by the people and "recall" is sometimes applied to them. This system is unsatisfactory. People cannot judge the qualities necessary for the post. Party feelings operate and incompetence and dishonesty is not shut out. Judges may incline to be popular and the weak often get no protection. In practice, however, in many states, judges are re-elected so that their tenure is practically permanent. A more indefensible procedure is found in certain states where the decisions of the judges regarding validity of statutes can be annulled by popular review.

The "Territories" have a bi-cameral legislature with powers similar to those of the states. But, their acts may be amended or annulled by the Congress. Their governors and the executive officials are appointed by the President.

Though the federal government was given by the constitution adequate powers of levying and collecting taxes and loans, American

[1] Munro, *Government of the United States.*

opposition to direct taxes levied by England in the past made it impossible for the centre after independence to collect direct taxes. It had to depend on customs duties and loans. It was only in 1913 that a constitutional amendment allowed the centre to levy an incom-tax. This income-tax soon became the most important revenue of the centre. As in all federations, grants-in-aid by the centre have become important in U.S.A. also. These grants involve federal supervision of the services for which these grants are made. In U.S.A., grants are made to raise standards of welfare in poorer areas or provide new services or equalise tax burden in units of unequal financial capacity. These grants represent more than 15% of the total expenditure of the states.

In the budget of 1955, individual and corporation taxes provide about 50,000 million dollars out of the total revenue of 60,000 million dollars. Most of the balance came from excise and employment taxes. The main expenditure was on national security, including foreign aid, and this accounted for 67% of the total expenditure.

A national coinage system was adopted in 1792 providing for a decimal system of coinage based on dollar. But, till the Civil War, there was no issue of paper money. Soon after the outbreak of the Civil War, financial needs led to the issue of a paper currency called Greenbacks. But, over-issue of this depreciated it and increased prices. This was remedied only later. Another difficulty was that the coinage, as fixed in 1792, was a double standard of silver and gold, though silver was more in use. But, after 1870, several countries gave up silver coinage. Germany adopted the gold standard by 1871. Holland and Scandinavian countries demonetised their silver currency in 1875. The Latin Union restricted the silver coinage in 1873. Discoveries of new silver mines led to increase of silver production[1]. The consequent difficulties forced U.S A. to give up coinage of the silver dollar by 1873. In 1900, U.S.A. definitely adopted the gold standard. Gold discoveries in Alaska in 1898 had given her enough supplies of gold.

A national bank was set up in 1791 and State Banks also developed. But, it was not certain whether the constitution authorised a Federal Bank. The Democrats who stood for state rights were against it, and President Jackson, who was a Democrat, refused to renew its charter in 1832. This led to increase in the number of State Banks. It was only in 1873 that a law allowed national banks to be formed by federal charters. For long, the states exercised no control over banks and there were frequent bank failures. Depression following the San Francisco earthquake of 1906 led to a banking crisis in 1907. This led to the passing of the Federal Reserve Act in 1913[2]. U.S.A. was divided into 12 areas, in each of which was a

[1]Between 1873 and 1874, most of the important European countries gave up silver coinage. This lessened the demand for silver and further depreciated it.

[2]Laughlin surveys the origin and history of the Federal Reserve Act in his *Federal Reserve Act*, 1933, (review in *Political Science Quarterly*, March 1934).

regional Federal Reserve Bank in which all national and state banks had to be members. A Federal Reserve Board looked after these Reserve Banks. This system gave U.S.A. an excellent banking system, but it still remained decentralised. The strength which would result from centralisation was still absent.

As in England, there was great dislike of state control in economic matters. U.S.A. retained the old puritan tradition of individual freedom. This was intensified by the jealousy of the various states against any increase of the power of the centre. So, in the 19th century, the only state control tolerated was in the matter of tariff. Pressure of economic events made it necessary to have an authority to regulate trade, and Hamilton succeeded in entrusting this power to the federal government. In 1791, Hamilton drew up his famous Report on Manufactures, arguing in favour of protection. But, protection came in only gradually. It must be remembered that U S.A. has great resources and an extensive home market. So, the problem of foreign trade and tariff was of less importance to her than to other lands. So, for a long time, her tariff policy was influenced more by considerations of federal finance. A legacy of the Civil War was a high protective tariff. Taussig (*Tariff History of the U.S.A.*) calls the tariff of 1864 as probably the greatest measure of taxation the world has ever seen. The Republicans, who were strong in the eastern states and connected with bankers and industrialists, stood for a high tariff. The Democrats, who were strong in the southern states which wished to export their commodities like cotton and to buy manufactures at cheap prices, stood for a low tariff. In the Presidential election of 1899, protection was the issue on which Cleveland who led the Democrats fought. But, he was defeated by Harrison, the Republican candidate. Hence, in 1890 there was enacted the highly Protectionist McKinley Tariff.[1] After this, both parties agreed on protection, though they differed as to whether the tariff was unreasonably high. The growth of foreign trade led to the organization of the Department of Commerce as a separate federal department in 1912.

State regulation of transport came only slowly. U.S.A. has been provided by Nature with a system of long and navigable rivers. The Mississippi and its tributaries drain a large region in the very heart of the most fertile area of the country. This river, the Missouri, and the Ohio are navigable for very long distances. In the north, the Great Lakes offer unique facilities for transport and their canals connect the sea with the agricultural and mineral areas of the north-west. Canal building developed from 1812. The Erie Canal, the most important artificial canal built in U.S.A., was completed in 1825. This connects the river Hudson with the Great Lakes, and forms a continuous waterway from the Atlantic coast to the Middle West. In 1954, an agreement between Canada and U.S.A. plans to improve the St. Lawrence River so as to accommodate ocean-going

[1]The Democrats reduced tariffs between 1894 and 1897. But, the Dingley tariff of 1897 finally returned to protection.

ships which can then reach the heart of the continent from the Atlantic. U.S.A. has also developed more electricity from water power in this area than any other country. There followed an era of canal building which declined only after the Civil War. Railway construction began about 1830. It was soon extended and all areas were connected by 1850. The first trans-continental railway was completed in 1869. Railway companies accomplished all this work. Absence of government control and low business morality led to abuses in the operation of the railways like discrimination in rates, raising of fares etc. Regulation of railway rates was in the hands of the states till 1870 in virtue of their authority to control commerce in their jurisdiction. But, this power was scarcely used. In 1887, the centre by an Act set up the Inter-State Commerce Commission to prevent discrimination, rate war and unfair activities. Capitalists opposed its activities, and most of the lines still continued to be controlled by a group of capitalists. The Elkins Act of 1903 was against unfair discrimination of fares. The Hepburn Act of 1906 empowered the Inter-State Commerce Commission to demand reports from companies and thus extended state supervision. In 1910, the Mann-Elkins Act placed under the control of the Commission telegraph, telephone and capable companies. The numerous decisions of the Commission accumulated a body of rules for the regulation of these companies. After the First World War, the authority of the Inter-State Commerce Commission over state commissions which regulate state commerce was affirmed by a law of 1920. The Shipping Act of 1916 created a Shipping Board to regulate shipping.

Agriculture gives employment to a larger proportion of the people than any other industry. Owing to the wide variations in climate and soil, America has an immense variety of crops. Only the Cordilleren region where hills block moisture from the Pacific and the Great Plains where rainfall is low (comprising only a quarter of the country) are unfit for agriculture. Even the Great Plains could be cultivated by irrigation. The remarkable development of American manufactures should not blind us to the fact that the chief industry of U.S.A. is still agriculture. By 1894, U.S.A. had reached the first rank in the world in manufactures with the result that she became self-sufficient in manufactures as in food. Raising of live-stock is the dominant industry of the semi-arid states of the West like Montana, Wyoming, Colorado and Texas. It is only by the 20th century that State control entered agriculture. Down to 1902, even irrigation was in private hands. Now, both the Centre and the States are promoting agricultural improvement and irrigation. The U.S.A. Fish Commission was set up in 1871 to conserve fisheries. A separate forest service was organized after 1905 to promote scientific forestry.

Industrial Revolution began in U.S.A. between 1806 and 1814. By 1850, the factory system was well developed. The opening of the West assured the East of markets for their manufactures. There was ample opportunity for men of ability and talent. The inventive skill and energy of the people, ever-increasing supply of capital, great

natural resources of coal, iron and other materials—all these helped industrial progress. The employer was helped by the absence of strong trade unions and ineffective labour laws. The relative scarcity of labour also led to the use of labour-saving machinery at all stages In 1800, only 4% of the people were urban. In 1900, a third of the people had become urban and, by 1930, more than half were urban. Between the Civil War and the end of the century, U.S.A. became one of the great manufacturing countries of the world. Strong belief in free competition and realisation of the benefits of large-scale industry led to combinations of employers from the 'eighties. Thus the Standard Oil Company was organized as a "trust" by Rockefeller in 1882. The success of this promoted other combinations. Consequent evils developed like increase of prices, "log-rolling" to obtain special privileges and other unfair practices. All this led to state interference. In 1890, the Sherman Anti-Trust Act penalised "trusts." Still, state supervision was irregular. The Spanish-American War of 1898 accustomed the people to the idea of government control. The dominating personality of President Theodore Roosevelt helped to execute laws which till now had been a dead letter and prosecute offenders. A Federal Trade Commission was set up to dissolve monopolistic combinations. The civil service was reformed to root out corruption, and new federal departments of commerce, labour and agriculture were instituted. But, even now, wealth was still accumulated in the hands of the rich and industrial magnates held a dominant position, like Henry Ford, the motor magnate, and the house of Morgan which controlled the steel industry. Labour movement was not strong at first. The possibility of getting land and opportunities for rise in life prevented discontent. The two great parties were too well organized to allow the development of other groups. The emigrant labourers who came after 1880 from Italy, Poland, Austria and Russia were ignorant and divided by language and other factors. So, labour could not unite. As labour legislation was not federal, there was great variety in the labour laws passed by the states. The individualistic character of the American law induced the Courts to invalidate laws passed by any state to protect the workers. In 1869, the Congress enacted a law that all federal employees should work for only eight hours a day ; but, this law remained a dead letter. A new code of labour legislation began only in 1900. From now most states began to regulate working hours and passed factory laws. Workers were compensated in case of industrial accidents and occupational diseases. Though there was no compulsory arbitration, conciliation was promoted in labour disputes. After World War I, U.S.A. joined the International Labour Organization and accepted many of its conventions.

Hamilton had stood for the development of big business and restriction of state control, while Jefferson advocated an egalitarian rural society. The courts were against social legislation in the 19th century and thus big business was protected. Laski (*American Democracy*, 1949) considers that America has created a social aristo-

cracy of her own based on money. American writers supported the existing position. While the state should protect citizens from industrial or financial tyranny, self-help and self-reliance on the part of the individual must be the aim, rather than state paternalism which would enslave human spirit. This belief was tolerated so long as U.S.A. continued to be a land of unlimited economic possibilities for pioneers. But, social evils resulting from industrialization and unemployment naturally led to the revival of the Jeffersonian ideal in a new form. Brandeis, the American thinker, believed that the base of American democracy must be the system of private property widely distributed and that a propertyless class is an insecure basis for democracy. The new atmosphere is seen in anti-Trust legislation and in the policy of "Square Deal" advocated by Theodore Roosevelt. This becomes more clearly manifest in President Franklin Roosevelt's policy of "New Deal" and social security legislation.

When he became President and assumed office on March 4, 1933, the Democrats had come into power after 12 years. 1921-28 had been a period of boom in American trade and industry. The rapidly increasing surplus resulting from U.S. exports increased the capital available for investment, and loans were made to several European countries. Unwise investments were made with parties of doubtful financial status like many South American states. The speculative boom burst in October, 1929. Rapid fall of commodity prices in the world prevented foreign debtors from paying even interest. This fall of prices also affected U.S A., as she was the biggest primary producer of the world and American farmers were unable to make payments on their mortgages. This led to many bank failures. The paralysis of credit and confidence threatened other banks. Industry also suffered. Wages sank to low levels. Unemployment increased, about 15 millions being jobless. Farmers were sunk in debt and there were many defaults. The Republican President, Hoover, who relied on big business, could not remedy the situation and was able to set up only a Reconstruction Finance Corporation to give loans to suffering industries. This was the position when Roosevelt became President, defeating Hoover who stood again. The breakdown of the American economic machine induced both houses of the Congress, which had Democratic majorities, to grant practically dictatorial powers to the executive. The President now began to pursue a big scheme of economic development while retaining the institutions of private property and private enterprise. A determined effort was made to adjust the traditional organization to a new control of economic and social life. This policy was supplemented by an effort to bring about a change in the distribution of income in favour of labourers and farmers.[1]

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[1]There is a survey of his first year's work in the *Nineteenth Century and After*, Sept., 1934. See also *Current History* from March, 1933. The first phase of the working of the N.R.A. is surveyed in the *Political Science Quarterly*, June, 1934. The article "Whither Roosevelt" in the *Nineteenth Century and After*, Oct. 1935, may also be consulted.

The banks of the country were closed to prevent a continual run on them. The position of the banks was then examined so that those which were reasonably solvent were given financial help from the Reconstruction Finance Corporation. The dollar was diverted temporarily from gold and ultimately anchored to it again at a lower parity so as to lessen the burden of costs and debts. An act of the Congress legalised direct government loans to industry.[1]

The National Recovery Act of June 1933 ordered the firms in each particular industry to frame codes for common action. Thus there developed codes like the Banking Code, Cotton Textile Code, Steel Code etc. These codes were meant to regulate, not abolish, competition so as to avoid arbitrary increase of prices, cut-throat competition and monopolistic action against consumers. A section of the code allowed rival firms to enter into voluntary agreements to prevent competition. For this purpose, anti-Trust laws were suspended. The codes also allowed labour the right of collective bargaining, minimum wages and abolition of child labour. Thus, the American worker got the right to organize unions for collective bargaining. The employers were induced to shorten hours thus enabling more men to be employed. Employers were also induced to increase wages, the object being to increase the purchasing power of the working classes, the chief purchasers of consumer goods. The N.R.A. administration worked from 1934 in three sections. The National Industrial Recovery Board was the executive. It included representatives of industry and labour. The Industrial Policy Committee framed policy by issuing regulations. The Judicial Committee interpreted the N.R.A. Codes and heard disputes between industry and labour. The Agricultural Adjustment Administration which was set up by the Agricultural Adjustment Act gave farmers loans at low interest and helped them to organize marketing so that they may get better prices.

The President also began a large programme of emergency public works including buildings, highways and slum clearance. This provided work for the unemployed, and was run by a Civil Works Administration. The Tennessee Valley Authority was created to co-ordinate navigation, production of power etc., in the area covered by that river and increased its prosperity. It is noteworthy that Roosevelt sought the aid of professional advisers like university professors who were nicknamed the "Brains Trust". This scheme was only an expansion of the idea of Economic Councils. By 1934, the emergency part of the "New Deal" had done its work. Credit and confidence were restored. The old evils of child labour, sweating and payment of starvation wages were gone for ever. Employers realised the need for co-operation and stopping unfair practices. Production increased

[1]To check the wild speculation which unsettled economic conditions, Acts were passed setting up federal commissions to supervise the operation of the stock and commodity exchanges. A Securities Act (based on the English Companies Act) enforced standards of honesty.

and unemployment declined. The Supreme Court questioned the legality of the powers given to the President by the N.R.A. to make regulations. But, in 1937, when he was re-elected, the Supreme Court upheld his actions.

The President also embarked on social insurance measures to improve the welfare of the citizens. The Social Security Act of 1935 set up compulsory unemployment insurance and compulsory old age insurance for small wage-earners, old age pensions for the poor aged over 65, sickness benefits to mothers and dependent children and help to the blind and the crippled. The "New Deal" programme which began with the N.R.A. in June, 1933 ended with the adoption of the Fair Labour Standards Act of June 1938 to regulate wages and hours in industry where labour was unorganized or where the unions were weak, and the Railroad Unemployment Insurance Act of June 1938.

Roosevelt succeeded, because the crisis in America, unlike as in Britain, was more domestic than international. Unlike Britain, America did not depend on foreign trade for her prosperity. She suffered only because of unwise investments abroad by the bankers and fall in prices at home. Unlike as in Russia, the "New Deal" was not based on the idea of a radical transformation of society and rejected state regimentation in details, while favouring planning. Roosevelt did not aim at uprooting capitalism but only at reforming it, keeping a good extent of individual initiative and freedom, but regulating and co-ordinating actions of groups. It may be noted that, even before him, government intervention and economic control had already begun. His policy now extended control to every part of the economic system, but his measures antagonised the big capitalists who were also predominantly Republican. Still, it is noteworthy that the Republicans, who came to power after the Democratic dominance, have kept up many of the practices introduced by Roosevelt. At present, labour is protected against unemployment, accidents and sickness and the risk of old age through the co-operation of the government, the employers and workers according to the Social Security Act of 1935. Though the scheme is supervised by the federal government, each state administers its own programme. In 1954, the scheme was extended to farmers, household servants and certain professional groups like engineers and accountants. What happened in U.S.A. shows that even those who are not Socialists had been impressed by the existence of extreme poverty side by side with enormous wealth, and felt that the powers of the community should be used to protect the weak and improve the conditions of the life of the masses. The tendency everywhere has been to abandon *laissez faire*.

Wade in his Introduction to his edition of Dicey's *Law of the Constitution* points out that, while a federal state may constitute a bulwark against Totalitarianism, it is impossible for it to order economic and social conditions by state authority, as federal powers are limited. He thinks that dangerous discontent may result and wreck

the constitution. But, this estimate has been falsified by events. In U.S.A. a good deal of social security legislation has been carried out. In Switzerland, each constitutional revision has increased the authority of the centre. This shows that the people do not hesitate to increase the powers of the central government when there is necessity. It has also been urged that a federal government is always weak. Promptness in public business is said to be hampered by division of authority. Marriott (*Mechanism of the Modern State*) points out that, while an Englishman owes allegiance to only one kind of law, there are four kinds of laws in U S.A.—1. the Federal Constitutional Law, 2. the Federal Ordinary Law, 3. the State Constitutional Law, and 4. The Ordinary Law of the State. This weakness, however, is much exaggerated. The experience of U.S.A. in the two World Wars shows that promptness in action was even more possible in a federal government than in a unitary government.

Latin America. This includes Mexico, the six Central American Republics, the three Carribean States of Cuba, Haiti and the Dominican Republic and the ten South American States. Most of it (with the exception of Brazil which was held by Portugal) was under Spain. But, they became independent in the 19th century.[1] Many states have Red Indian and Negro populations along with the descendants of the Spanish and Portuguese settlers, and racial mixture is also great. The only countries with a majority of white men are Argentina, Chile and Uruguay. In Venezuela, also, there is a large stock of French descent. About 84% of the South American oil is produced here. Most of the area is backward and the population largely poor and illiterate.

After independence, constitutions were framed slavishly modelled on U.S.A. and full of eloquent democratic sentiments ; but, disorder spread amongst a people unaccustomed to democracy. Military dictatorship is mostly found. The presidential system, copies from U.S.A., increased this tendency. This experience proves that the good government of U.S.A. has not been the product of its constitution. but due to the capacity of its citizens for political responsibility.[2] The highly centralised government of the old Spanish Empire had accustomed the people to autocratic authority. Hence the only stable governments have been military dictatorships, and democratic rights are violated in practice. Even when the constitutions are federal in form, all power rests practically in the central government.

Argentina is the most advanced educationally and from the economic standpoint. Her population has the largest percentage of European blood. After independence, civil war and dictatorship alternated. The constitution framed in 1853 provided for a federation in which the states had residuary powers. The President was elected for six years by an electoral college, but must be a Catholic.

[1]Bolivar who inspired the rebellion against Spain was influenced by the revolutionary principles imported from England and America, the French philosophers and by old writers like Suarez, Vittoria and Mariana.

[2]See Newton, *Federal and United Constitutions.*

He had more power than the President of the U.S.A. There was a Congress of two houses on the American model. The Chamber of Deputies was elected for four years, half retiring every two years. The Senate consisted of delegates from the legislature of the 14 provinces and from the capital elected by the people holding term for nine years. Judiciary and provincial governments were modelled on those of U.S.A.[1]

Bryce noted that Argentina was the only South American state where representative democracy functioned reasonably. He ascribed this to the fact that it was the one country where, from the beginning, communications were the easiest. In spite of what Bryce says, we find that the country was disturbed by military *coups*. Finally, in 1946, the country came under General Peron who, as President, began a plan of reform. He introduced a new constitution in 1949. The president is to be elected directly by the people, as also the senate. The term of the senate is limited to six years and of the lower house, to four years. In 1953, half of the provincial deputies for a province were elected by professional associations and trade unions, and the other half by the usual method of universal suffrage. The state was given by the constitution the right to monopolise any business in the public interest. Peron said that he had no objection to *latifundia* (big estates), provided they were productive ; but, he desired a better distribution of ownership so that land is not left unproductive and no peasant proletariat is created. A Five Year Plan was begun to promote industrialization and social welfare was promoted. Some observers, however, think that all this has led to a feeling of insecurity and that production has deteriorated. Women suffrage was allowed in 1951.

Brazil became independent in 1822, but was governed by an emperor till 1889. On his abdication, it became a republic. Like Argentina and Mexico, it was a federation and the states had residual powers. President Vargas who held power from 1930 to 1945 abolished federation. In 1937, he re-modelled the constitution on Fascist lines. His "New State" (*Estado Novo*), though unchecked by constitutional restraints, developed economic and social reforms, and did not imitate the intolerant persecutions followed by the Fascist states. Social legislation helped labour, and industries were promoted. But, in 1945, he was deposed by a revolution. A new constitution of 1946 restored federation. The President was to be elected for five years and be ineligible for re-election. There was to be a Senate and a Chamber of Deputies elected for four years by compulsory vote of literate voters. It is to be noted that 60% of the people are illiterate. As a compromise between the presidential and parliamentary governments, it was provided that ministers, though appointed and dismissed by the President, must appear before parliament if summoned to explain any matter. In 1948, the

[1]There are 16 provinces with separate governors, legislatures and courts. There are territories with governors appointed by the President. Central government dominates over local government in practice.

Communists were banned. President Vargas was re-elected in 1950, but, owing to a military revolt, committed suicide in 1954. The federation consists of eleven states.

Chile, like Brazil, was ruled by a landed aristocracy during the 19th century basing itself on an autocratic constitution of 1833. In the 20th century, the poorer classes opposed this government and, in 1925, the constitution was revised. The President was to be elected for six years by the people. The Congress consisted of two houses : the Senate elected for eight years and the Chamber of Deputies for four years by all male citizens over 21 who could read and write. Women could vote only for local elections. The church and state were separated.

In Uruguay, a new constitution of 1952 abolished the Presidency and vested the government in a national council of nine members elected by a meeting of the senators and deputies. The council would include the government and the Opposition and would work on the Swiss model. Nine ministers chosen by this council would look after administration. A tribunal of five would arbitrate in administrative disputes.

Mexico, next to Brazil, is the largest of the Latin American states in population. Like Brazil, it is an example of a unitary state converting itself into a federation by devolution, because of administrative causes. After independence in 1821, confusion followed. In 1848, U S.A. conquered half of Mexican territory. Dictatorships and civil wars continued. The original constitution has been changed several times. A constitution dating to the early 19th century had provided for a federation of 29 States and imitated the constitution of U.S.A. The President was elected by the people for six years and could not be re-elected. He must be over 35 years in age. His powers were similar to those of the President of U.S.A. The legislature was of two chambers. The Senate was chosen on the basis of two senators from each state and federal district holding office for six years. The Chamber of Deputies was elected by manhood suffrage for three years, and financial business originated in it. Bills vetoed by the President could be re-passed by two-thirds majority. During the recess of parliament, a permanent committee representing both houses transacted business on behalf of the Congress. There was a Supreme Court with subordinate Courts on the U. S. model.

The present constitution, drafted in 1917, continued the federal form of government and many features of the old constitution ; but, Article 27 gave the state control of all subsoil wealth which gave rise to disputes with American Oil Companies which were settled later by payment of compensation. Article 123 legalised trade unions, established an eight-hour day and provided various amenities to workers. Fundamental rights were guaranteed. President Cardenas (1934-194) speeded up land distribution, nationalised some industries and passed legislation against corruption. Private enterprise was not, however, abolished. The Penal Code of 1930 abolished capital punish-

ment except in the army. Woman suffrage was given only in 1954. Illiteracy continues to be general.

The National Revolutionary Party (now called P I.R.—*Partido de la Revolucion Institucional*) was formed in 1928 at the instance of President Calles, being a merger of different groups. An opposition party developed only in 1938.

The Pan-American Union was formed in 1890 as a league of 21 American States, including U.S.A. and with its initiative, to promote political and economic collaboration. Canada is not a member. The Union held regular Pan-American Conferences in different places. After World War II, U.S.A. wanted closer co-operation. In 1948, the Bogota Conference formed a regional organization called the Organization of American States. The treaty setting this up contained 26 articles. A permanent council is set up. An Inter-American Conference should meet once every five years. Other specialised organizations were also set up to further economic, social and cultural relations between the members. The Pan-American Union continues as the central organization acting as the secretariat. The treaty condemned war and resort to war. Disputes should be settled by the Inter-American Conference before they could be taken to the U.N.O. Aggression should be resisted by all. The headquarters of the Union is in Washington. The tenth Inter-American Conference which met at Caracas in 1954 reaffirmed human rights and freedom and declared itself against Totalitarianism and foreign intervention in America.

CHAPTER II

FRANCE

AFTER the fall of Napoleon III, a self-elected committee in Paris declared a temporary republic. A new constitution was drawn up by a legislative assembly elected in 1871. At least two-thirds of the members were for monarchy. The assembly had to face the trouble caused by the Commune of Paris which, unlike the provinces, was strongly republic and radical. The rebels made an attempt to set up a government called the Commune organized on the basis of Socialism, the aim being to unite all the communes of France into a federation. The rising was put down and, gradually order was restored. But, the memory of this left great bitterness between the political parties down to the First World War. The monarchists, however, could not set up monarchy, because they were hopelessly divided. There were the legitimists who supported Henry, the Count of Chambord, grandson of Charles X. The Orleanists upheld the Count of Paris, grandson of Louis Philippe. There were also Bonapartists. Napoleon III, who sought refuge in England, died in 1873. But, his son was alive. Opinion of the country was republican. But, the assembly had a monarchist majority, and the President, Marshal MacMahon, who succeeded the first President, Thiers, was a royalist. Though the monarchists were divided the Legitimists would have succeeded. But, when all other arrangements were made, the Count of Chambord refused to recognise the Tricolor as the national flag.

The Tricolor had symbolised what France had gained in the Revolution and Chambord's action made monarchy impossible. The moderates of all the parties combined to set up a republic in the constitution of 1875. It was admittedly regarded as a purely provisional arrangement, till monarchy could be restored. Hence, no attempt was made to draw up a complete and logical constitution as was done before. Now, a mere framework was sketched out in three constitutional laws, owing to the immediate need of providing for a government, which could rule the land, till a more satisfactory constitution should be set up. So, unlike the old constitutions, it is not comprehensive in its contents or arranged in proper order. It is brief and partial. It does not contain any political theory. It also provides for only a part of the government's structure. The provisional nature of the constitution is seen in the arrangement made for its amendment. The monarchists hoped to change it into a monarchy, while the republicans hoped to make it more democratic. Hence, they wished to make changes easy. So, it was provided that amendments to the constitution might be made by the two

chambers of the legislature sitting together as the National Assembly. This Assembly must meet, if both houses, either by themselves or on the initiative of the president, called for a revision. Note that in the old French constitution, change was made difficult and in some cases needed the consent of the people.

The constitution of the Third Republic may thus be regarded as the least rigid among rigid constitutions[1]. The constitution ultimately proved stable. The monarchists gradually lost influence. The death of the son of Napoleon in South Africa in 1879, the death of the Count of Chambord in 1883 and the death of Count of Paris 1894 gave a great blow to them. President MacMahon, who did not like the republic, dissolved the chamber in 1897, holding that the President under the constitution was independent of the chamber. But, the elections went against his views and he had to resign. The army also had many royalists. In 1890, General Boulanger, a popular soldier, demanded a change in the constitution and sought election to the chamber. But, when accused of conspiring against the state, he fled from France and committed suicide. Between 1897-99 a Jewish captain, Dreyfus, who was disliked by his Catholic and royalist colleagues, was convicted for treason and punished. But, he was vindicated as the result of popular agitation. After this case, more royalist officers were removed from the army. In 1886, a law was passed expelling from France all royalist claimants and their heirs. In 1884, a constitutional amendment declared that the republican government should never be made the subject of a proposal for change. Thus, the monarchists lost ground. Their remnants were represented only in those elements of the Rightist party who were opposed to parliamentary government and were strongly nationalist and militarist.

The church was monarchist. The Catholic clergy, which had suffered in the French Revolution, opposed the Republic. Hence, the Republic had to take some measures against this stronghold of monarchism. A complete system of lay education under state control was set up. The State also controlled the instruction given by schools run by religious orders. In 1905, the church was separated from the State, thus ending the concordat of Napoleon with the Pope and depriving the clergy of salaries from the state. Though the Pope allowed the clergy to show loyalty to the Republic in 1892, only a minority was loyal. But, after the First World War, the bulk of them became loyal. Under Pope Benedict XV (who died in 1922), official relations of the Pope with France (which had been broken off after 1905) were restored.

In 1879 an amendment transferred the capital from Versailles to Paris. In 1884, an amendment reorganized the Senate. Note that the constitution was itself passed by the legislature without being

[1] The difference between constitutional and organic law may be noted. The latter may be repealed or changed like an ordinary law ; but, unlike it, it deals with the governmental system.

subjected to the people, and the legislature could change it. This virtually made the French legislature almost as sovereign as the English Parliament. Unlike the old constitutions, there were few provisions about fundamental rights.

The President was elected for seven years by a joint session of the two houses and can be re-elected. The character and function of the presidency were settled by the fact that the framers of the constitution wanted to keep the people used to a visible personal head of the state, so as to prepare the way for an easy change to monarchy. The election became a matter of party organization. But, one advantage was that the President could work smoothly with the legislature. The President lived in Paris in a grand style, and the actual election was a dignified ceremony.[1] He was the executive head of the state and as such executed the laws, initiated legislation and issued ordinances. He also appointed all important officers, but all these powers were really exercised by ministers responsible to the legislature. He was the commander-in-chief of the army, navy and air force. But, parliament decided the size of these forces, and war could be declared only with its consent, as also the making of treaties. With the consent of the council of ministers, he could appoint the Senate as a high court, to try any one for an attempt against the safety of the state. This power was exercised in the case of General Boulanger and also Caillaux in 1920.

He was not responsible for his officials' conduct except in the case of treason. This irresponsibility of the head of the state had been copied from the tradition of England. But, like the President of United States, he could be impeached by the lower house before the Senate. In the United States, the condemned person could be only removed from office, but, here, no limit was given to the punishment. Members of families that have reigned in France were excluded from the election.

In legislation, the President could ask parliament to reconsider laws; but, this power was never exercised, as France had a responsible ministry. With the consent of the Senate, the President could dissolve the Lower House; but, this power became disused. M. Doumergue, prime minister in 1934, tried to revive this power; but failed and had to resign. Hence, unlike England, a defeated ministry could not appeal to the people. Even in foreign policy, information was given to the President only as a matter of courtesy.

The gradual contraction of the power of the President was due to historical circumstances. The first President, Thiers, exercised powers after the constitution was drawn up. When he was defeated in the assembly in 1883, he resigned. The assembly now elected Marshal MacMahon to be President and also provided that his ministers should be responsible to the parliament. This experiment of having responsible government in combination with a strong President

[1] The election took place at Versailles to avoid the popular excitement of Paris.

did not work, and friction developed between the President and Parliament. Finally, the President gave way and, after his retirement in 1879, the President tended to become an ornamental figure. Maine remarks, "It has been reserved to the President of the French Republic neither to reign nor to rule." But, as Lowell points out, this weakened position of the President saved France from the danger of his trying to make himself as dictator, while the fact that he was independent of the changes in the government gave the republic a dignity and stability it had never enjoyed before. Unlike the English king, he presided over the cabinet and could intervene in the discussion. As Middleton remarks in his *French Political System* (page 95), "His knowledge of the work of the previous governments and his acquaintance with the points of all important questions give weight to everything he says." With regard to appointment of the ministers, he had more free choice than the English king In England, the function of the Crown has been simplified by the tradition according to which the leader of the Opposition automatically becomes the prime minister. But, in France, owing to the numerous parties, there was no definite leader of the Opposition, and the majority of the Chamber was difficult to be analysed. So, the President had great need of diplomacy to find a solution to the numerous ministerial crises which arose in France. But, as Munro points out, like the English king, once the President had chosen the prime minister, he had in practice no voice in deciding who the other ministers should be. Even the choice of the prime minister he made could be rejected by the Chamber of Deputies on a motion of confidence.

Bryce points out that the President commanded less formal deference than a king. His only important function was to represent the unity of the state and take part in public ceremonials. This lack of power impaired the prestige of the office, and many writers, in the face of the inconstancy and excitability of the chamber favoured a stronger executive. But, the French Parliament did not want to relinquish any of its powers. Still, a President of powerful personality could exercise a real influence on affairs, partly in virtue of the long duration of his office and his regular presence at the cabinet. Maine's aphorism that the President neither reigns nor governs needs qualification.

Still, though the President should be an old and experienced parliamentary figure, the nature of the office did not lend itself, as Munro points out, to the election of strong and aggressive personalities, because such personalities created friction and were not preferred by party leaders. In 1924, Poincare, who was prime minister, with the support of President Millerand, undertook the invasion of the Ruhr, owing to friction with Germany. But, the enterprise was too costly and the ministry fell. The forced resignation of the President vindicated the tradition that the President should not be an active partisan.

Each minister was in charge of a portfolio, and, by a constitutional law, the ministry was responsible collectively to parliament

for the general policy of the government and individually for their personal actions. Ministers were members of one or other of the two chambers, though there was no rule to that effect. Unlike the English ministers, they had the right to attend and speak in either chamber, whether they were members of it or not. But, unlike the English parliamentary system, since the establishment of the republic, the ministry changed on an average almost once a year. Between 1873 and 1926, there were about 75 ministries[1]. This was due to the fact that parliament was divided into numerous groups which were themselves subdivided and multiplied into subgroups. Further, these groups were not permanent, but were dissolved and retransformed. As in the rest of Europe, the combinations were shifting, based on common grievances or common ambition. Besides racial and religious groups, there were followers of old dynasties. Hence, there was no national party organization, and, in elections, campaigns were carried on in each district separately. The fluidity of each group made the fate of the combination uncertain. Dislike of dictation and desire to achieve prominence made the deputies disregard the authority of party leaders. Extreme groups united only for the momentary purpose of defeating a cabinet which they disliked from opposite causes. The passions created by the three Revolutions took a long time to die. The divisions were increased by the bitterness of labourers against the *bourgeoisie* and by religious conflicts between the clerical and secular groups. The extreme groups differed on fundamental matters like the form of the government or the economic basis of society.

Unlike the English Parliament, the French legislature interfered in all matters of administrative detail. Barthelemy remarks, "The French parliament is not content to be a collaboratory with the executive power in the determination of general policies ; it wishes to govern alone." Ministries might be defeated on mere technicalities or trifling matters. The group system engendered intrigues. Ministers could retain power only by granting favours to deputies who wanted them for their localities or for individuals, and this process demoralised the administration. Still, as Bryce remarks, these evils were less serious in France, for the general course of administration, though it was disturbed, was not disorganised, because it was worked by a strong and competent bureaucracy which was little affected by ministerial changes. In France, there was a real fear of personal power amongst the people, and hence cabinet instability was not regarded as a calamity. Still, the defects of the responsible type of government were illustrated in France in the unstable coalitions due to the existence of many groups, scramble for power at the expense of principles and use of political power and influence to secure a majority.

These divisions were strengthened by the theoretical outlook of the French people. A number of groups cling to a separate ideal

[1]During this period, England had only 12 ministries.

and were unwilling to compromise on this, even for consolidating themselves into a bigger party. Even the "programme of the candidates tended to be philosophical documents, instead of statements of concrete policy." Further, the chief motive for party discipline was absent, because there was no fear that a hostile opposition would succeed to power. The defeat of one ministry did not mean the coming to power of a different party. The ministries were merely reconstructed, as the cabinet itself was only a coalition of different groups. Hence, political organization suffered. Some of the groups had no existence outside the parliament. Unlike the English prime minister, the French prime minister could not be an autocrat because the ministers were rivals rather than friends and stood for their particular groups. They could even throw out the prime minister by themselves resigning and rousing opposition to him in the Chamber. So, the prime minister had to coax the members of the ministry. Ministerial instability was also the result of a procedure called the Interpellation. The Interpellation was followed by a motion to pass on to the "orders of the day." The debate which arose decided the fate of the cabinet. The ministry might be upset in a moment of excitement or on an unimportant issue. Lowell explains this practice as due to the rooted suspicion of the legislature which regarded the ministers as natural enemies to be attacked, which itself was a legacy of the old fear of the great power of the executive which it had often abused.

The ministry might be upset in a moment of excitement on an unimportant issue. In 1925, there were five different cabinets in one year. But, the interpellation by itself was not the main reason for the instability of the cabinet. The motions of adjournment in the British House of Commons are similar. The real reason was the weakness of party discipline.

Ministers had greater power in France than in England owing to the centralised nature of the French government. Supervision of trades and occupations and even of individual life had been traditional in France. Napoleon made this centralisation even more than it had been under the monarchy. France retained this centralisation, though it was modified to some extent by the introduction of the elective principle in local government, and a certain amount of decentralisation. So, the permanent service formed a powerful bureaucracy. Further, unlike the British executive of the 19th century, the French government exercised some legislative functions. Most of the bills passed by parliament were short and simple and the details were filled in by executive decrees. The government could thus interpret the laws freely and issue decrees, to cover cases which the legislature did not provide for. It was only in 1907 that the Council of State assumed the power to declare an ordinance invalid on the ground that it was issued in excess of authority. The government could also, with the consent of the Council of State, add to the expenditure under certain heads sanctioned by parliament and borrow under certain circumstances. In times of war, the government could exercise great power by the proclamation of a state of siege.

Soldiers could search houses and expel non-residents. Military courts could exercise criminal jurisdiction and control the press and associations.

The legislature consisted of a Senate and a Chamber of Deputies. The Chamber of Deputies was chosen by secret ballot by all males of the age of 21 or over who resided in the constituency for six months and who were not minors, convicts, bankrupts or in active military and naval service. The commune (that is, the town and village) kept the electoral lists which were the same for local and central elections and revised the lists every year. The electoral system had been much changed. Before 1885, the electoral unit was the local division called Arrondissement., each sending one representative. Later, this was changed into a system of "General Ticket"—the *Scrutin d'Liste* in which the deputies were elected by the Department as a whole (1885). This system helped the ambitious General Boulanger in 1889, and, hence, a return was made to the old system of single-member constituencies, which continued till 1919.

Opposition to this system called *Scrutin d'Arrondissement* arose, because these districts were unequal, and consequently some areas had two times the number of voters than in others. In 1919, there was adopted the *Scrutin d'Liste* with proportional representation. According to this, the local area, called the Department, was allotted one representative for every seventy-five thousand people. But, the total number of representatives of the department should not be more than three. Any voter, who was aged 25 or over, was eligible to be elected. But he need not be resident. A list of candidates was nominated in each department by every one of the political parties. The voters voted generally for a party and not for any individual candidate. Any candidate who got an absolute majority of votes or any group who got such an absolute majority was elected. Supposing all the seats were not filled, then proportional representation was used. Thus, this system differed from that of 1885. An electoral quota was obtained by dividing the total number of the votes by the number of seats to be filled. The votes cast for members of each list, were averaged. This average was divided by the electoral quota. The result would decide how many seats each party should have. If no list secured an average equal to the quota, a second election would have to be held. If the position was unchanged, the highest candidate in the lists would be regarded as elected without any regard to the grouping of the candidates.

This hypothetical example illustrates how the system worked. Let us assume that six deputies are to be chosen and that 30,000 votes are polled. The electoral quota would be 5,000. Let us assume that the votes are divided as follows amongst the parties :

Party 1		Party 2		Party 3		Party 4	
Candidate	Votes	Candidate	Votes	Candidate	Votes	Candidate	Votes
A.	18,000	D.	9,000	G.	8,000	J.	2,000
B.	14,000	E.	8,000	H.	6,000	K.	2,000
C.	8,000	F.	1,000	I.	1,000	L.	5,000
Total	30,000		18,000		15,000		9,000
Average	10,000		6,000		5,000		3,000

A, who had secured a clear majority of all the votes, is elected. The average of List 1 is twice the quota. So, it is given one more seat and B is elected. D in List 2 and G in List 3 are elected, because the average is more than the quota in List 2 and equals it in List 3. One more representative has to be chosen. This seat is allotted to the list that has polled the highest average votes. Thus, C, in List 1 is elected. Whenever the figures of the poll did not lend themselves to exact distribution, the seats left over would go to the list which received the highest number of votes.

The *Scrutin d'Liste* divided the chamber for all practical purposes into two opposing groups, because it was to the interest of groups with more or less similar programmes to combine in setting up one list of candidates which would unite all their adherents. Thus, in 1920, the *National Bloc* succeeded and, in 1924, the *Cartel des Gauches*. But, this grouping did not accord with the real French politics. The Conservatives (Right Wing) and the Communists (Left Wing) disliked it. The French system of proportional representation, like the Belgian system, was devised by d'Hondt. Unlike the Hare system of proportional representation used in Switzerland, the voter was not allowed to indicate his choice but voted only for as many candidates as were to be elected. The system was only an imperfect variety of proportional representation, because it tended to give a strong party more than the number of seats to which it was entitled and a weak party would get no representation at all. Hence, this system was also opposed and, after much agitation, this was abolished in 1927 and a return was made to the *Scrutin d'Arrondissement*. In this, the member could know the particular needs of the area. The electors would also be familiar with their member. It was simple in organization. But, it might lead to the domination of local interests over general interests and minorities might not get proper representation. Still, France preferred this, because in this the voters had more control over their representative. The deputy being regarded as an agent of the voter, the tendency of the Chamber to split into groups was strengthened.

Representatives were also elected from the colonies and from Alsace-Lorraine. Disputed elections were decided by the Chamber, often on partisan grounds.

The electoral process was inexpensive, as the candidates were expected to supply even the ballot papers. Another peculiarity in the election was that an absolute majority was required and, if it could

not be secured, a second ballot was held between the two candidates who got most votes in which a simple majority vote was enough. This procedure induced each political group to nominate its own candidates for the first ballot, because by this they lost nothing, and would also be helped to the same extent, because, if the group was able to poll a large vote, they could use this to bargain with another party to get concessions in return for their support. The procedure increased expenses of candidates and election turmoil. A candidate must be a voter of the age of twenty-five years or over; but, he should not be the member of a family which had reigned in France, or an official in the area who could use his position to influence the election. All government servants, except a few who were in the highest grade, had to give up their posts if they accepted election to parliament. In spite of these restrictions, the government was accustomed to exercise great influence in parliamentary elections. The local officers like the Prefect used their position to secure votes for the ministry.

The Chamber was elected for four years and the members were generally experienced in politics or in local government. It worked largely through committees. In each month, the Chamber was divided by lot into eleven bureaux, while the Senate was divided into nine bureaux. Each bureau elected a member for each of the standing committees. So, the committees were not nominated by the cabinet and need not agree with it.

Yet, all laws were referred to these committees. The ministers were helpless to decide the issue and had to present the laws to the legislature in the form finally approved by the committees. Since each deputy could use his influence to put forward his own personal views, the various groups also would not work in harmony. Of all the committees, the most dominating was the budget committee which made its own irresponsible additions and omissions in the proposals of the government. Thus, the ministers were left at the mercy of the committees. So, after 1910, this procedure was changed. Committees were now elected by the two houses according to the strength of the various party groups. So, the bureaux lost all importance but, the budget committee, which consisted of forty-four members, was still free to change the proposals of the government. However, in practice, changes were made with the approval of the government so as to avoid undue influence in favour of the localities. After the proposals emerged from the committees, the report of the committee was piloted in the house, not by a minister but by one of the members chosen as the *Reporter* of the committee. As the French cabinets were unstable, this procedure possessed the merit of continuity of policy, as dictated by the legislature.

The laws were really framed by administrative experts under the direction of ministers and then revised by the committees. But, even then, the laws were short and the legislature simply expressed the opinion of the people on the matter. The actual details of the

law were supplied by the decrees of the ministers issued in the name of the President.

Dicey remarks, "The rigidity of the constitution consists in the absence of any right on the part of the parliament, when acting in its ordinary capacity, to modify or repeal certain definite laws termed constitutional or fundamental. The French constitution-makers and their continental followers have, while directing their attention to restraining the ordinary legislature from attempting any inroad upon the fundamental law of the state, have, in general, trusted to public sentiment. The restrictions placed on the action of the legislature under the French constitution are, hence, not in reality laws, since they are not rules which will, in the last resort, be enforced by the courts. The American system which makes the judge the guardian of the constitution provides the only adequate safeguard hitherto invented against unconstitutional legislation." Power to decide on the constitutionality of laws had not been given to the courts by the constitution, nor had it been acquired by usage as in U.S.A. Even the powers of the judiciary could be curtailed by parliament.

Very often, the sittings were marked by disorder. Charges were hurled against each other in public and the dignity of the Chamber suffered. It has been remarked that "even the method of preserving order lacks decorum and dignity and is accompanied by caustic sallies from the chair". The president of the Chamber, unlike the Speaker of the House of Commons, was a party man.

As regards the parties, at the commencement of the republic, there were factions opposed to the republicans who wanted to effect a revolution. These consisted of supporters of the old Bourbon, the Orleanist and the Bonapartist dynasties. But these parties lost their influence in course of time, and now all parties were republican. But, all parties were divided into groups, whose programmes were ill-defined and shifting from time to time. A small party called the *Action Francaise* had no belief in democracy. They favoured provincial autonomy centring on provincial assemblies. These assemblies would send delegates every year to a central assembly at Paris to decide on a common financial arrangement. In foreign policy, they were strongly nationalist. The *Bloc National* was a group of conservative parties. The *Cartel des Gauches* was an alliance of progressive groups ; but all these groups tended to disunite. Both disappeared after 1924. In comparison, the Socialist party was the best organized and most disciplined. For long, this was also split into groups. But, by 1905, Jaures consolidated all the groups into a strong unified party and it became a real political party. Socialism however was still held only by a minority and, further, the majority of the Socialists were not Marxists. There were also communists who believed in class struggle and revolution. The anti-Fascist groups combined into the Popular Front in 1927. But this disappeared before the Second World War.

After the First World War, the less radical elements were taught to combine against them in their own self-defence. Munro (*Governments of Europe*) remarks that, after the war, the liaison between the party organization in the country and the group organization in the Chamber became much closer than before. But still, many groups had no party organization at all and even had no party discipline in the Chamber. Deputies disliked control. No party ever commanded a majority in the Chamber which made coalition governments inevitable. Bryce remarks (*Modern Democracies*) that politicians were discredited partly by accusations they brought against one another and partly by brokerage of favours to individuals and localities and by other scandals.

Another drawback in the system was that the cabinets were weak because they were coalitions. Since the members of the groups were united only loosely, the ministers had to grant the favours wanted by individual deputies to secure votes. The deputies, besides securing personal interests, had also to help local interests, because they owed their position mainly to local influence, owing to the absence of strong party organizations. The large powers exercised by government affected every interest in the country and, hence, this fact subjected the ministers to pressure from all sides. The favours wanted by the deputies covered all fields. "The more favours they bestowed, the fiercer the struggles for them and the less free the ministers to pursue their own policy untrammelled by concern for votes."

Clemenceau, who was a prime minister during the First World War, retired to private life soon after its end. In 1919, the *Bloc Nationale* came to power, and continued in power till 1924. But, the ministries was not strong, till the rise of Poincare. In 1924, Poincare fell from power, and the *Cartel des Gauches* took over power under its great leaders, Herriot and Briand. This party, unlike Poincare, believed in harmonious relations with Germany and peace with all Powers. It held power till 1926.

From 1926 to 1932, power was taken over by the *Union Nationale* under its leader, Poincare. This held power till 1932. As against Germany, defence agreements were made with Poland and the other Powers which were grouped as the Little Entente. But, from 1932 to 1934, Herriot was again in power. He was succeeded by the Doumergue who held it till 1936. By now, relations with Germany again became strained owing to the rise of Hitler. In 1936, the *Popular Front*, dominated by the Socialists, won the elections and its leader, Blum, held power till 1937. France took the lead in setting up the non-intervention committee to keep the European Powers out of the Spanish Civil War. After a short interval of the government of Chautemps (1937-1938), Daladier became the prime minister in 1938. He took part in the Munich meeting of England, France, Germany and Italy, which tried to appease Hitler. When the Second World War broke out, France tried to stop internal party

strife. Daladier was given power by parliament to issue decrees without parliamentary sanction and exercise various emergency powers. Still, France was weakened by the quarrels of the parties. Ministerial instability is seen in the fact that from 1871 to 1940, there were 105 cabinets. The average of the life of a cabinet was less than seven months. France was exhausted by these internal quarrels. Further, the Communist party had developed in importance from 1914 and, during the war, this party became unpatriotic after Russia joined Germany. Hence, in 1939, the government suppressed the party and expelled Communist representatives from parliament. Consequently, factious dissensions increased. All this led to the easy fall of France in the Second World War.[1]

The Senate was chosen by an electoral college in each department composed of the deputies of the department, members of the general council of the department, members of the council of the arrondissements, and delegates elected by the councils of the communes. The delegates of the communes outnumber the others so much so that the senate was called "the great council of the communes". A senator should be forty years or over and held his term for nine years, a third retiring every three years. The members were largely chosen from the deputies so that it contained a large proportion of experienced parliamentarians ; but, it included also many men famous in science and literature. France regarded the Senate as perhaps the most perfect work of the Third Republic. Bryce declared that no other modern legislature showed a higher standard of ability and knowledge. The Senate had many more distinguished statesmen than the Chamber of Deputies.

The Senate was regarded as approximating to an ideal Second Chamber. It was constituted differently, but not too differently from the other house. The method of indirect election led to the election of men of mature judgment, while partial renewal enabled the preservation of continuity in the life and traditions of the house and ensured the presence of a body of members with experience. Popular feeling and influence affected both houses. At the same time, the Senate served as a brake on legislation, but not too high a brake. It scrutinised and revised all proposals including financial ones. The members were older, more experienced and generally better off. They were assiduous and competent in their work, and generally had a high standard of ability and knowledge. Thus, it was "a stabilising factor in a country where political instability has become proverbial". Bryce, who points this out, also remarks that partisanship is less pronounced and outbursts of passion unusual.

[1]It has been remarked by Munro that France was a country with the forms of a republic, the institutions of a monarchy and the spirit of an empire. Lowell remarks, " The French administrative system is indeed designed for an empire and would work admirably in the hand of a wise and benevolent autocrat who had no motive except the commonwealth ; but, when all these powers fall under the control of popular leaders, it can hardly fail to be used for personal and party ends."

As the Senate recognized its own inferiority in powers and rarely quarrelled with the other house, it excited no general hostility.

Financial business originated in the lower house. With regard to other legislation, the Senate had equal authority; but a second chamber with powers equal to that of the lower house cannot exist in a system of parliamentary government. So, though not in law, in practice, the Senate became subordinate. The Senate could propose amendments; but, could not force them on the Chamber. The Senate, because it could not decide the tenure of ministers, became unable to control government policy. French writers discussed the question whether the ministers were responsible to the Senate also, because sometimes the ministers had resigned because of an adverse vote in the Senate.[1] But, by usage, the Senate has yielded mastery to the lower house. The chamber overthrew cabinets which had the confidence of the Senate. However, the Senate could never become ornamental, because the Chamber of Deputies was divided into numerous political groups, and the cabinets were weak. Party lines were not so evident in the Senate, which contained also more experienced and distinguished members. It did valuable work in revising legislation passed by the other house in haste. The Senate was also given a unique position in the constitution. With its consent, the Chamber of Deputies could be dissolved, though this power has not been exercised for a long time. It could be formed into a high court to try any person for acts against the safety of the state. Thus, it tried Boulanger. It tried Caillaux in 1920. It sat with the Chamber of Deputies as a National Assembly to revise the constitution and elect the President.

Napoleon built up the simple, symmetrical system of local government in France, based on a regular, multiple arrangement. The Department, the biggest unit, is divided into Arrondissements, and these into cantons, and these into communes. The communes alone were historical in origin and are hence, irregular in size and population. This secured the commune organic vitality. The other divisions were artificial, based on geographical considerations or administrative convenience. This French scheme spread to other European countries like Italy, Spain, Portugal, Belgium, Holland, and also Latin America. Even in England and the United States, many favour this uniform system of local government.

It has been remarked that France presented the curious spectacle of a nation broadly democratic in respect to its constitution and central government, yet more closely bound by a hard and fast administrative regime, than any other principal states of Western Europe. Though the central government had been the subject of constitutional experiments, local government had remained generally stable. Thus, the prefects set up by Napoleon regulated everything, and he and his subordinates formed the pivot of the administration.

[1] In 1925, the Herriot ministry resigned like this—the third instance when the Senate forced a ministry out.

Though the elective principle had been introduced into local government, this had not been very effective. This was due to the centralisation of the government. Local bodies generally looked to the central government for guidance in all matters. Further, the old historical divisions had been abolished except the commune, and the old provincial feelings were not diverted to the new artificial creations. It was only after a long time that the departments developed into historical units with some local feelings. Another factor was the habitual inclination of Frenchmen to welcome a strong central government owing to fear of disorder. The government also was anxious to prevent its enemies from organizing opposition from the localities. So, local councils were banned from considering any matter of general politics, and this was broadly interpreted to restrict their powers.

Ordinarily, functions which affect only a limited area like water supply, lighting, local transport, maintenance of hospitals and roads are regarded everywhere as the responsibility of the local government. But, there are many matters like education and health which are also of general interest. Hence, it is difficult to lay down where central control and local control should operate. The extent of the powers of the local body depends on historical conditions and the nature of the people also. In France, these conditions led to a greater degree of control than in Anglo-Saxon countries. Centralisation also seemed to be a guarantee against local disorder and secured efficiency. But, it gave little scope for local initiative, and destroyed popular interest in local affairs. Bryce remarks that local self-government is the best school of democracy. Many great men of England like Joseph Chamberlain were trained first in local government. By instilling a feeling of common interest in common affairs, this training forms an important educative agency. Further, many localities may have their own traditions and thus local self-government would be advantageous to them. Contemporary writers recognise the need for decentralisation. If the state is to be an instrument of freedom, its functions should be dispersed. This will also lessen the burden on the central government. Even in France, a movement favoured the reorganization of the land into great self-governing provinces or regions based on old historical associations and physical unity. But, this movement never made progress. Several opposed it, on the ground that it would revive the old provincial spirit which had hampered national unity in the past. The French local areas had now no independent autonomy and the executive was not responsible to the local council. Change in this was difficult owing to national habituation to centralisation—the custom of looking to the centre for everything and state paternalism. Local bodies might have large powers of legislation. But, even these local laws were administered by officers of the central government like the prefect who looked to the ministry for instructions. The centre was also reluctant to delegate power to local bodies. Further, nearly all important matters were dealt with by the central government which also controlled the police everywhere.

The department had a general council elected for six years on manhood suffrage, one member from each canton. It elected its own president ; but, the council could sit only for a short time and could be dissolved by the centre at any time. The authority of the council was restricted and it could not act on any matter, until it first heard the report of the prefect. Execution of its decisions was also entrusted to the prefect. The prefect also supervised all other local areas and so the department had no control over the subordinate local areas.

The arrondissement was a mere administrative district without any important powers and without any revenue of its own. Its council was made up of one member from each canton. Administration was looked after by a sub-prefect, who, like the prefect, was an agent of the central government.

The canton was only a union of communes. The commune was either a town or a parish. With the exception of Paris and Lyons, all communes had the same government. A council was elected for six years, on manhood suffrage. It elected a mayor ; but the mayor became the agent of the central government and had to carry out the orders of the prefect. The council could not remove him and had also restricted powers. The inflammable traditions of the Paris mob in the past prevented Paris from having even the local autonomy given to other towns. The city council had no control over its administration which was in the hands of the prefect of the Department of the Seine (which practically covers the city of Paris).

We pass on to the judiciary. Unlike England there were two sets of courts. Besides courts of ordinary law, there were administrative courts. The principle of separation of powers was interpreted to mean that ordinary law courts should have no power over the conduct of the executive. Further, in France, royal jurisdiction had gradually superseded feudal jurisdiction by reserving indefinite jurisdiction to the royal courts and permitting appeals from feudal courts to the royal courts. Hence by the 16th century royal jurisdiction became universal in France, a process which England had anticipated even in the Middle Ages. One result of this late development was that no uniform French law like the English Common Law developed till after the French Revolution. Hence, the power obtained by the judiciary in England fell into the hands of the administration in France. There developed the view that questions of public law, unlike private law, should not be decided merely by the principles which deal with private justice, but from the basis of public policy. Hence there developed a series of administrative courts. The idea underlying is that the government has certain rights different from those of the private citizen and the nature and the extent of these rights should not be decided on principles governing the relation of private citizens with each other. In some states like Belgium, this administrative jurisdiction is also vested in the ordinary courts. But, in France, and many countries of Europe, there is a

separate hierarchy of courts composed of officials to deal with these cases. Lowell remarked, "The government has always a free hand and can violate the law, if it wants to do so without having anything to fear from the ordinary courts." Dicey, in his early edition of the *Law of the Constitution,* also regarded the French administrative courts in an unfavourable light as contrasted with the English courts.

Administrative Law is defined by Dicey as that part of the law which determines (1) the position and liability of all state officials, (2) the civil rights and liabilities of private individuals in their dealings with officials who represent the state, and (3) the procedure by which these rights and liabilities are enforced. Dicey notes that curious analogies to administrative law and jurisdiction were found in the claims of the Crown, in 17th century England, *e.g.,* the idea that royal prerogative was beyond and above the ordinary law, special tribunals like the Star Chamber etc. Dicey thus traces the growth of administrative law in France : "The modern administrative law of France has grown up largely during the 19th century ; but, the idea on which it rests, as rightly traced by Tocqueville, rests on those of the *Ancien Regime.* Napoleon fused together what was strongest in the despotic traditions of the monarchy with what was strongest in the equally despotic creed of Jacobinism, and the form of the *Droit Administratif* emerges from the Consular Constitution of the Year VIII." Dicey remarks, "It rests at bottom on two ideas alien to us : (1) the government (and every servant of it) preserves, as representative of the nation, a whole body of special rights and privileges or prerogatives as against private citizens and the extent of these is to be determined on principles different from the considerations which fix the legal rights and duties of one citizen towards another. (2) Necessity of preventing the government, legislature and courts from encroaching on one another's province." Dicey says that, besides the fact that the Administrative Courts may represent official or governmental opinion, a kind of authority attaches to the whole body of officials such as is hardly possessed by the servants of the Crown in England. Bryce remarks that the executive in France, pitifully weak in its relations with the deputies, is overstrong against the individual citizen. He says, "The privileged position of Administrative Law is serious also, because the range of action of the centralised administration is so wide."

It is now realised that these criticisms are unfair. The French Administrative Courts are independent of executive control and are able to give better justice to citizens affected by the public acts of officials. Goodnow (*Comparative Administrative Law*) remarks, "The general failure of England and the United States to recognise an administrative law is really due, not to the non-existence in these countries of this branch of the law, but rather to the well-known failure of English law writers to classify the law...In so far as it fixes the organization of the administrative authorities, administrative law is the necessary supplement to constitutional law. It also complements constitutional law in so far as it determines the rules of law

relative to the activity of the administrative authorities. It is that part of the public law which fixes the organization and determines the competence of administrative authorities and indicates to the individual remedies for the violation of his rights." Munro notes in his *Governments of Europe* that, in modern days, even in Anglo-Saxon countries, there are privileges like those of the members of the legislature which give them a special status, and that the French have extended them to administrators also. Dicey himself corrected his original views to some extent in the 8th edition of his *Law of the Constitution* (1915). Even in England Dicey himself recognised the increase in the tendency to confer on the executive legislative and judicial powers. The French Administrative Law, unlike the Civil Code, is case-law slowly built up by the courts and is a well-knit system, liberal to the individual, as Munro points out. Munro regards it as a counterpoise to centralisation, protecting citizens from the arbitrary actions of public officials. Ogg remarks that experience has shown that administrative courts, though they are indeed parts of the government, possess a high degree of independence, and very often their decisions are against the government. Any act of an official not justified by law is nullified. Compensation is given not only for damage due to errors of officials but also where it results from the carrying out of a law.[1]

The prefect and a nominated council of three called the council of the prefecture formed an Administrative court and had jurisdiction over all local bodies and local officials. There was one such court in each department. Appeals were carried to the Council of State. Now, two to seven departments are combined in a regional council, consisting of four councillors and a president appointed by the Minister of the Interior. This forms the lowest court. Appeals are taken to the Council of State.

The Council of State had also some political functions. While the government was not bound by its advice, it could consult it on questions of a political nature. This function is now abolished.

The system of executive nominating the judges led to some complaint that the minister of justice who made the appointment decided it by political considerations and influenced by the deputies. Contrast England. The Council of State was formerly presided over by the minister of justice ; but, it now has a non-political head. Its composition was controlled by the government, but it was a body of legal and technical experts. The legislative powers vested in this fell into disuse. It has become strictly a court which maintained a high standard of justice, and French people regarded it with great respect, as a protection against arbitrary executive acts. Rights of citizens were guarded against public encroachment. Any citizen could challenge any act. The Council of State could also cancel decrees of subordinate bodies like the local councils.

[1] See Duguit, *Law in the Modern State*, for a lucid survey of administrative law and courts.

The ordinary courts were also in a hierarchy. The lowest court is that of the justice of the peace of the canton who deals with minor civil and criminal cases. There was a parallel series of civil and criminal courts above this, in the arrondissement and the department, the highest being courts of appeal having jurisdiction in many departments.

Unlike England, judges were appointed on the basis of competetive examinations and, unlike England, all courts, except that of the justice of the peace, are composed of many judges. Unlike England, there is no circuit system. The courts are stationed only in some particular places. Like the British courts, they could not question the constitutionality of a law of the legislature. The decision of the courts of appeal were final except where they made mistakes in law. In such cases, a court called the Court of Cassation at Paris, quashed the judgment and ordered a re-trial. In 1872 there was established a Court of Conflict consisting of a number of judges from the Court of Cassation and the Council of State to decide whether a particular case belonged to the administrative courts or the ordinary courts. The ordinary courts included also special courts of experts like Industrial and Commercial Courts to try industrial and commercial cases.

Unlike England and U.S.A., judges are not bound by precédents. But, judicial consistency had forced a kind of consensus of opinion on important matters. Thus, some kind of judge-made law developed. Trial by jury in criminal cases was employed only in the Assize Court which decided criminal appeals in each department.

It has been remarked that in France two opposite tendencies were at work. There was a long tradition of state control. The Revolution brought in a belief in individual liberty. Hence, while the state helped economic growth, individual enterprise helped its further development. Contrast Germany where state aid was continuous.

After the Revolution, the peasants got equal citizenship and independence, and the landless class disappeared. There grew up also a new class of landlords. The extensive estates of the royal family, of the nobles, and of the church had been nationalised and sold to those who had enough capital to buy land. Napoleon also rewarded his middle-class supporters out of the rest of the state land. Thus agriculture became important. It was only after industrialization later that it lost ground to some extent. In 1801, the urban population was only 7%. In 1911, it rose to 26% and by 1921 to 46%. Still, even now, France is self sufficient as regards her food. The French peasant, in spite of his intense individualism, has inherited a co-operative habit from the old tradition of common agricultural practices in the Middle Ages. The state also did much to foster co-operation. Thus peasant co-operative syndicates extended all over France, *e.g.*, *Union du Sud-est*. The typical landholder throughout the 19th century was a small farmer or a peasant. It is only in the 20th century that an agricultural proletariat developed

and formed syndicates (which have been legalised by the government in 1884).

The Revolution had re-organized the weights and measures and the coinage throughout France on a common decimal system. Before the Revolution, the unit of currency was the *livre*. In 1803 Napoleon set up bi-metallism. The gold *Napoleon* succeeded the *Louis d'Or*. Gold and silver *francs* were coined in the ratio of 1 : 15½. This system, based on the decimal standard, was so convenient that it was adopted with slight changes by Belgium, Switzerland and Italy. These countries along with France formed the Latin Union to regulate the currency. This system continued till gold discoveries in California in 1849, followed by those in Australia in 1851, upset this. The output of gold was quadrupled. Another dislocation came owing to increase of silver output from Mexico and South America after 1867. Germany, U.S.A., Holland and the Scandinavian countries stopped silver coinage. The Latin Union had to discontinue silver coinage in 1878. Silver lost more than a quarter of its value in relation to gold. Countries having gold standard increased after 1886 when gold discovered in South Africa flowed into the world, *e.g.*, Russia, Japan etc.

After the Revolution, a good banking system also developed. Unlike England, the Bank of France was not set up by private initiative. Though there was an earlier foundation, it was Napoleon who helped to set it up in 1800. Its officers were appointed by the state. It was empowered to issue paper money. French economy was now sound, as France had recovered by 1815 from the troubles which followed the over-issue of the paper money, *Assignats*, during the French Revolution. Other banks also developed which later amalgamated into big banks. The Revolution swept away the old bad system of taxation and the main revenue came now from direct taxation. Napoleon's Continental System had built up a tradition that industry could progress only by high protection, and Napoleon also got much revenue from indirect taxation. But, economists like Bastiat advocated Free Trade, and, influenced by them, Napoleon III concluded the Cobden Treaty with England in 1860 by which both the English and the French allowed concessions in tariff duties between them. Napoleon also partially opened the French colonies to trade with other lands. Other countries in Europe generally followed the French lead. But, after his fall in 1870, there was a swing back to protection. Free Trade was unpopular and had been accepted unwillingly by the legislature under Napoleon III. Theirs was a protectionist. In 1892, the Méline tariff gave protection to French agriculture and industry. The French mainly relied on indirect taxes till the World War I forced them to resort to an income-tax. But, after the war, it was not possible to balance the budget. Inflation led to great increase of prices, and, by December 1925, the *franc* depreciated to less than a fifth of its pre-war parity. The devaluation of the *franc* in 1928 and drastic economy helped the government to remedy the situation. France was also helped

by the payment of reparations from Germany. Hence, France escaped the world depression of 1929 This prosperity continued till Germany began the World War II. France had more territories than post-war Germany with a smaller population, abundance of fertile land and resources from her colonies. The savings of the thrifty French people enabled the banks to lend money to other countries, and Paris rivalled London as the financial centre of the world.

French industry had been ruined in the decade following the Revolution. But, the Revolution had abolished all old restrictions on industry like internal customs and the rules of the guilds. Napoleon attended to transport. One great advantage of France was that, like Italy, she had a complete network of Roman roads which did not become ruined as in England. The peasants had also to repair the roads by compulsory service (*corvee*) and the state added to the roads. Napoleon planned a network of roads and canals on modern lines. While the national highways were maintained by the state, the departments and the communes were responsible for the local roads. Napoleon III built railways on a uniform system. Here also, as contrasted with England, a national railway programme was drawn up even by 1842, converging on Paris and operated by companies with state help. The state had the right to supervise rates, insist on safeguards for passengers and to be represented on the governing bodies and, ultimately, gain ownership after a period. All this developed industry. During the second quarter of the 19th century, Industrial Revolution invaded France and, by 1830, had advanced under tariff protection. Napoleon III further developed industrialization. He fostered companies. The French Commercial Code of 1807 (which was imitated in Belgium, Holland, Switzerland, Italy and Spain) recognized joint stock companies and placed them under official control. The war of 1870 with Germany interrupted this industrial growth. As a result of the war, France lost to Germany her great cotton industry in Alsace and the great iron area of Lorraine. Still, her economic strength was seen in the comparative ease with which she paid off the indemnity imposed on her by the Germans. Soon, industrialization revived. World War I again dislocated industry owing to the devastation of the German invasion. But the state helped recovery. France now got back Alsace-Lorraine and also the right to exploit the Saar coal mines for 15 years. These resources also helped economic recovery. Since the war, the state also helped aerial transport by generous subsidies. In spite of industrialization, the typical Frenchman still continues to be, however, the small peasant, small artisan and the small trader.

As in England, the Industrial Revolution, while increasing the wealth and importance of businessmen, developed also an industrial proletariat. This did not affect all France, as France still remained a nation of independent farmers. But it affected northern France where industry became more important than agriculture.

Unlike England, this proletariat tended towards Socialism. Since universal suffrage had been retained in the constitution, Napoleon III

could not ignore the workers. Trade Unions, though still illegal, were tolerated[1]. After his fall, the Paris Commune of 1871 tried to carry out Socialist ideas. But it was suppressed. Barbaret, a journalist, reorganized the trade unions repudiating Socialism. A law of 1884 allowed workers freedom of association. This slow recognition of trade unions was the reason why they did not grow up slowly by gradual growth as in England. Again, unlike England, the trade union movement was not built up piecemeal. It tended to be built up in a complete pattern. This emphasized its intellectual aspect at the expense of the practical. As, unlike England, the workers were not trained to use parliamentary methods, the labour movement often turned to unconstitutional methods. Since Socialism was felt to be too slow, from 1884 Syndicalism became dominant. Syndicalism wanted to destroy the existing order by strikes and sabotage and then reorganize society according to local industrial groups. It resembled Marxism in its emphasis on the power of the workers and class war. In 1909, Georges Sorel supplied its best exposition in his *Reflections on Violence*. In 1895, there grew up the General Confederation of Labour which despised parliamentary methods, advocated "direct action" and fostered revolutionary attempts. The influence of France in ideas is seen in the fact that Syndicalism influenced the Guild Socialists in England and the Industrial Workers of the World in U.S.A. But, beyond instigating some strikes, syndicalism did not thrive in France by the 20th century. The conflicts between Socialists and Syndicalists weakened the trade union movement. The scattered nature of French industry hampered the growth of trade unions. The middle-class peasant proprietors did not take to Socialism. The conservative classes like the *rentier* class which dominated the Right and the Centre were too powerful.

In social legislation, France was behind other lands, though Socialism was preached here longer than elsewhere. Napoleon set up a system of poor relief. But the poor, unlike as in England, had no legal claim to relief, and relief was left to local bodies. It was only later on that the state paid grants-in-aid to local authorities. The co-operative movement was also encouraged after 1848 in order to wean away the workers from Socialism. This movement became important only from the 'eighties owing to the work of certain middle class leaders called the School of Nimas who regarded co-operation as a method of transforming social conditions. Factory legislation began in 1841 by forbidding employment of children, though it was not properly enforced. A Factory Act of 1900 imposed a uniform 10-hour day for all industries where women and children were employed. The World War I accustomed the people to greater state activity. The state had set up minimum wages in war industries and imposed compulsory arbitration in disputes. In 1919, an 8-hour day was imposed for all workers in all industries. In 1928, a law provided a comprehensive insurance scheme for sickness, invalidity

[1] Cole, *World of Labour*, shows that the French trade union movement was not continuous.

and old age, the workers, employers and the state contributing. In 1936, the parties of the Left were in a clear majority in the Chamber of Deputies, and the ministry of Blum was able to set up a 40-hour week, annual fortnightly holiday and collective labour contracts. The Bank of France was subjected to greater control.

But by now, the political condition had deteriorated. The weak cabinets due to the constitutional conditions of France were unable to achieve quick decisions or exercise resolute will during World War II. The success of Germany disheartened the people and made them war weary. The leaders were not of outstanding ability. The conservative classes were afraid of Communism and those who were secretly hostile to the Republic turned against the *regime*. German "Fifth Columnists" exploited the disunity in the country. Thus, the Third Republic collapsed during World War II.

After France submitted to Germany, the National Assembly met at Vichy and gave full power to a government headed by Marshal Petain to draw up a new constitution. This constitution lasted from 1940 to 1945. It abolished the President and concentrated all power in the hands of a Chief of the French State who should govern France with the help of a council of ministers. The legislature was to consist of two houses, one of which was based on a political basis and the other on a functional basis. But the legislature could not control the government. Freedom of speech, press and association were curbed. Strikes and lock-outs were forbidden. In industry, a corporate organization integrated workers and employers. France was reconstituted into new provinces, 17 in number, under regional prefects. Except in the villages, all elected councils were replaced by nominated councils. Existing courts continued ; but, new tribunals were created to deal with political offences. Thus, an authoritarian constitution was created[1], concentrating all power in the executive, though a referendum was provided. But this constitution was opposed by the French outside France led by de Gaulle.

After the defeat of Germany in the war, de Gaulle, who became the president of the provisional government, became master of France and could have made himself a dictator. But he preferred to summon a constituent Assembly in which all political parties from the extreme right to the Communists were represented. Till the Assembly drew up a constitution he formed an interim government with himself as the president. He pleaded for a strong government like that of the United States. The constituent assembly appointed a commission to draft a constitution. This constitution, commonly called the Cot constitution, recommended a legislature of a single chamber elected for five years, restriction of the age of voting to twenty, franchise for women and a president with limited powers. The prime minister would wield real power. The executive would have no power to issue decrees. The powers of the prefects would be transferred to local elected bodies. This constitution had the backing of the Socialist

[1] See article in the *Pol. Sc. Quarterly*, March, 1942—"National Revolution in France".

and Communist parties. But, it reduced the president to the position of a puppet. It also failed to guarantee civil liberties sufficiently. So, when it was submitted to the people in 1946, it was rejected. In 1946 a new constituent Assembly[1] drew up a constitution which was accepted by a majority of the electorate and came into force on December 24, 1946. This constitution was much closer to the idea of de Gaulle, though not satisfactory to him. In this constitution, which set up the Fourth Republic of France, the old institutions were revived under new names with some changes. Thus, the Chamber of Deputies is called the National Assembly. The Senate is called the Council of the Republic. The new constitution was the result of a compromise[2].

De Gaulle resigned his presidentship in 1946 saying that the new constitution would make a strong government impossible. His prophecy proved true. He did not want dictatorship but only a strong government which would not be so dependent on the legislature as before. He now organized a new party called the Rally of the French people whose object was honest, efficient government regardless of party affiliations. What de Gaulle wanted was that the president should form a government responsible to the assembly, but rejection of a government bill should not lead to its resignation. The fall of the government should be brought about only after a distinct vote of censure.

The new constitution is a short document of 106 clauses with a preamble. The preamble repeats the old Declaration of Rights, but with modifications so as to dilute its great emphasis on individualism. This bill of rights repeats the declaration of the rights of men of 1789 adding new economic and social rights. It opens with the old affirmation that all men are born and remain equal before the law. Another clause is specially devised to prevent Nazism and forbids any differentiation between citizens on grounds of race etc. Women are granted equal rights with men. The definition of property is radically changed from that of 1789. Article 17 of the latter declared : "Property being an inviolable and sacred right, no one can be deprived of it except when public necessity, duly recognized according to the law, clearly demands it, and then, on condition that a just indemnification is paid in advance." But, Article 32 in the present Declaration states : "Property is the inviolable right to use, enjoy and dispose of the goods guaranteed to each citizen by law. No one can be deprived of it except for the public good duly recognized by law and under the condition of a just indemnification fixed according to the law." Article 33 adds : "The right of property cannot be exercised contrary to the good of society or in a manner to prejudice the security, the liberty, the existence or

[1] This also consisted of three parties as in the first assembly : the M.R.P. (Popular Republican Movement), the Communists and the Socialists. But the first was in greater strength.

[2] There is a summary of the constitutional position in France since 1939 in the *India Quarterly*, July-September, 1946.

the property of another. Any goods or undertaking the exploitation of which has or requires the characteristics of a national public service or of a *de facto* monopoly ought to become the property of the collectivity."

The new Declaration lays down in great detail the obligation of the government to care for the welfare of the citizens. Thus, it declares that every one has the right to employment and guarantees right of association. Workmen have the right to decide working conditions and a voice in the management of undertakings. The right to strike, to fair wages, to holidays, to education and protection of health is guaranteed The sovereignty of the state is also limited by any arrangement in defence of international peace on the basis of reciprocity. The Declaration has 36 articles, unlike the Declaration of 1789 which had only 17.

The President is, as before, to be elected for seven years by the two chambers sitting together, but by public ballot, not secret ballot. His term is limited only to two times. The constitution gives him, however, more share in the conduct of the affairs of the state. He presides over cabinet meetings and has to maintain records of those meetings (Art. 32). Thus, he could become an authority to interpret the transactions of the cabinet. President Auriol (1947-53), the first President, gave the office importance as an umpire between different parliamentary groups and gave the office much prestige. He made great use of cabinet records and held a position of authority at the meetings of the cabinet which no previous President enjoyed. The President can send messages to the National Assembly. He can send back bills passed by the legislature to it for reconsideration ; but, the legislature can reaffirm its view. Making wars and treaties need the approval of the legislature. He also presides over the High Council of the French Union and is the chief of the defence forces. Administration is carried on by a cabinet of ministers responsible to the legislature. The president of the Council of Ministers is chosen by the President, according to the party position in the National Assembly.

Article 48 insists on the collective responsibility of the cabinet. Certain rules have provided for avoiding cabinet instability. The head of the council of ministers has to submit to the lower house the policy of the cabinet and, only after getting a vote of confidence, he can form his cabinet. If, within a consecutive period of one and half years two ministries are overthrown by the legislature, the cabinet, under certain conditions, can dissolve the assembly. Formerly, the government could be overthrown on any vote of confidence. Now, a vote of confidence must be placed by the government before the assembly only after consultation with the President and after informing the assembly about this several days before the sitting. Again, it is only on a second vote unfavourable to the government that the government should resign. But, in spite of these provisions, ministerial instability continues. The right of

dissolution given to the President by Article 51 is limited so rigidly that its exercise is rare. A dissolution cannot take place as in England at the discretion of the government. It must be decided by the cabinet only after the advice of the President. The government is also helped by new advisory bodies like the Economic Council which reports on economic, financial and social problems, the Supreme Council of the Magistracy to advise the government on the appointment of magistrates and judges and the exercise of the President's prerogative of pardon, the Council of National Defence, the Council of National Education and the Council of State.

The legislature consists of two Chambers—the National Assembly and the Council of the Republic. The National Assembly is elected for five years by universal suffrage. The method of voting is by *Scrutin d'Liste.* Thus, voting is through departments by the method of proportional representation But, unlike before, there is only a single ballot. The number of seats for each constituency depends on its population. The parties prepare lists of candidates in the order of preference. The voters do not vote for individual candidates but only for lists. After the election, the seats in each constituency are distributed according to the votes got by the different lists. Till 1951, the party, which got the highest vote, got the first seat and the rest of the seats were on the basis of proportional representation. But, in 1951, the party which got an absolute majority of votes was given all the seats in the constituency. If no party gets an absolute majority, the seats are divided among the parties according to the proportion of the votes. Thus, parties continue to nominate candidates. The Council of the Republic is elected for six years indirectly. The election is through electoral college, in each department formed as before. A number of members are elected by the National Assembly. Certain representatives are elected from the French oversea areas. Members should be at least 35 years in age and half of the total number is to be renewed according to Article 5 every three years. Members of the upper house have taken the title of Senators. Women are eligible to be members of both houses. Contrast the Third Republic

The government is responsible only to the National Assembly. Article 13 definitely says that the National Assembly alone shall vote the laws. This has led Ogg to remark that the ministry may propose a law and the second chamber may suggest a law, but only the lower house can enact it. But Taylor thinks that the second chamber is not so powerless. It can insist on any bill being sent back to the assembly and, in that case, the bill can be passed only if it is supported by an absolute majority of all the members of the assembly. Legislation through committee continues as before. Regarding constitutional amendments, the republican form of government should never be changed at all. Regarding other changes, according to Article 90, the proposal must originate in the National Assembly and get the support of an absolute majority of the house. Then, the bill embodying the proposal must be passed again by an absolute

majority. It must be approved by a referendum, unless both houses had approved of it by a three-fifths majority or the assembly alone by a two-thirds majority. The constitutionality of laws is to be decided by a Constitutional Committee presided over by the President, presidents of both chambers and certain persons elected by both chambers from outside their ranks. Ministers can be impeached by the National Assembly and tried by the High Court of Justice.

The judicial system is the same as before. The only change is that the President appoints the judges from a panel of names prepared by the Superior Council of the Magistracy composed of the President of the Republic, Minister of Justice, four judges, two lawyers and six persons elected by the National Assembly from outside its ranks.

Local government functions as before. There are 29 departments in Metropolitan France. Corsica is one department. Algeria is in three departments. In 1945, Guadeloupe, Martinique, Reunion and French Guiana were also made departments. The arrondissement is under a vice-prefect.

The constitution of 1946 had created a complex and awkward procedure in the formation of ministries. Hence, a constitutional amendment bill was brought forward in 1953. This bill proposed that the prime minister-designate should be elected by a simple majority, instead of absolute majority. The other provisions of the bill are that the prime minister-designate must get the approval of the assembly after he selects his cabinet, and not both before and after as now, and that he can be defeated only by an absolute majority in a motion of confidence. It is also provided that all bills except money bills can be introduced in the upper house also, and, in case of disagreement, the bill will become law in the form as passed by the assembly after 100 days. The bill was passed in 1954.

France still continues to be divided into groups, each group being divided within itself So, governments continue to be coalitions of different groups having fundamentally opposite opinions. From the end of World War II up to 1951, France had twenty-one cabinets. The principal parties are the following : The *Mouvement Republican Potulaire* (M.R.P.) is supported by many conservatives as against the communists and includes Catholic elements. But its programme inclines to the left including limited nationalisation. The Socialists form a more extreme party. The Radicals form a middle group. A number of Rightist parties opposed to Socialism form the Republican Party of Liberty. A number of groups, nationalistic and favouring capitalism merged into this group in 1945. There is a group of Communists. The Gaullists are anti-Communist, but imperialist. The Socialists, faced by the threat of the Communists on one side and the Gaullists on the other, reluctantly support the middle parties.

It is noteworthy that by the end of World War II France was crippled in man-power. Its census of 1946 indicated a total popula-

tion of about 40 millions, a decline of about a million since the census of 1936. A policy of family allowances has been adopted to promote a higher birth-rate. Further advance has been made in state control. Industries like coal-mines, railways, electricity and gas are nationalised. The Bank of France was nationalised in 1945. Since 1946, a social security scheme includes every type of social insurance and medical aid covering from the cradle to the grave for all persons except employers. The First Five Year Plan (1949 to 1953) was to develop basic industries. The Second Five Year Plan (1953 to 1957) is planned to expand manufactures and agriculture. In 1954, the government got special powers from the National Assembly to carry on a long-term economic programme to expand and modernise the economy of the country, based on free enterprise which must however accord with national interests.

Like England, France had shared in early colonial exploration, but began colonial enterprise only in the 17th century. She colonised the valleys of the St. Lawrence and the Mississippi in N. America and set up settlements in several places in India. She set up chartered companies which were mainly responsible for colonisation and helped them. But her paternal and centralising policy destroyed colonial initiative. The centralised bureaucracy which ruled with an iron hand cared little for the improvement of the colonies, but only looked to the interests of France. Her colonies were also scattered and were not self-supporting. The internal decline of France and English colonial rivalry in the 18th century deprived France of the greater part of her colonies.

The French Revolution swept away all chartered companies and tariffs on colonial trade. In the 19th century, France, like England, developed a second colonial empire. The loss of Canada was compensated by the winning of Algeria, and that of India by the conquest of Indo-China. Between 1880 and 1914, France secured the chief gain in territory, though Britain still had the biggest empire. French rule extended practically over the northern coast of Africa. She had also possessions in West Africa. She held also many scattered islands in other areas. Direct rule was concealed under the form of protectorate in Tunisia, Morocco and Indo-China. The colonial empire was mainly in Africa and Asia. In America, there were only Guiana and some West Indian islands. Before World War I, France was the second great colonial power. Many felt that France had a mission to spread French culture in the world. Railways enabled penetration of difficult areas. From 1870, the growing protectionist and imperialistic sentiment led to the idea that France had a moral right to use her colonies as markets and as fields for investment. This policy, first applied to Algeria in 1881, was extended. Cultural assimilation was also tried by breaking up local customs and introduction of French law, language and traditions.[1] Contrast England. The French system of colonisation was midway between

[1] Girault, *Principles de Colonisation*, Vol. I.

the English idea of settlement by individuals and the usual idea of imperialistic control of backward regions. The French organically connected the colony with France by state-aided colonisation and state control intended to make the colony part and parcel of France. Thus, Algeria was made a French department. The falling birth-rate in France also made it necessary to reinforce the army with African troops. This also made colonies important. But French colonisation was small. Further, colonial government was costly and deficits had to be borne by the home government. Under a revised colonial policy beginning from 1928, greater consideration was shown to colonial interests in tariff policy. Still, colonial interests and French interests often clashed. Though the old theory of exploitation persisted to some extent, some of the colonies were given representation in the French Parliament, though these delegates were only a small minority in the chamber. In each colony, there was an elected council modelled on the General Council of the Department to which the native people were admitted under some conditions. This council voted the budget. But, still, no colony enjoyed self-government. The governor was the agent of the home government and was helped by an advisory council. Administration was controlled by him.

Even before the World War II, the rugged Riff region of Morocco rebelled under Abd-el-Karim and held out against the armies of France and Spain. They were defeated only in 1926.

After the World War II, Moutet, Colonial Minister in the Gouin cabinet early in 1945, declared that France would not act as a lord, but as a friend and partner. He abolished forced labour in the colonies, extended citizenship to colonials and began negotiations with nationalists in Indo-China. But, the conservative M.R.P, and financial magnates with vested interests blocked all enlightened colonial policy.

After the World War II, the phrase "French Union" was substituted for the term "French Empire" to mark the new orientation in colonial policy The Council of the French Union set up by Article 60 of the constitution, helps the French government regarding the administration of the colonial empire. One of the largest sections of the constitution is devoted to the organization of the French Union. The central organs of the union are a president who is also the President of the French Republic, a High Council consisting of representatives of the French government and representatives of the associated states and the Assembly of the Union consisting of representatives of France and the associated states. The members of the Union are France with Algeria, French West Indies and Guiana, French West Africa, French Equatorial Africa, Madagascar and some other islands in the Indian Ocean, French Somaliland, New Caledonia, some settlements in Oceania, Togo and Cameroons (now held under U.N. trusteeship), New Hebrides (an Anglo-French condominium in South Pacific) and the associated states of Morocco, Tunisia, and Indo-China.

The functions of the Assembly are purely consultative. So, France still has a supreme position.

Algeria is legally a group of three departments of Metropolitan France. Morocco is ruled nominally by a Sultan, but the French Resident General holds all power. Tunis is under a Bey as a French protectorate. Nationalist movements have begun in all these areas. In Morocco, the movement for independence is led by the Istiqlal party. The independence movement in Tunis is headed by the Neo-Destour party. At present, the French government is trying to come to some kind of settlement with this agitation. In 1951, Tunis was given some autonomy and the power of this autonomous government was extended in 1954. The national movement is not so strong in Algeria as it is in Tunis or Morocco.

As a result of nationalist agitation, the French Settlements in India were transferred to India in 1954, though a *de jure* transfer is still to be negotiated.

The French West Africa is a federation of colonies (now called territories), consisting of Senegal, Mauritania, French Sudan, French Guinea, the Ivory Coast, Dahomey, the Niger territory and the mandated area of Togoland (a former German colony which came to France at the end of World War I along with the French Cameroons). Each territory is under a governor. The head of the federation is a High Commissioner. In each territory, there is an assembly composed of Africans and Europeans elected by popular vote, which was set up in 1947. The Grand Council of French West Africa is elected by the assemblies of the territories and looks after common matters. The High Commissioner is responsible to the Minister for Colonies (now called Minister of Overseas France). This scheme illustrates the French system of integrating the colonies into a Greater France. The Constitution of the Fourth Republic asserted equality of all citizens without distinction of religion or race. The African has the right to vote if he is 21 and can be elected to the French Parliament. Each territory elects deputies to the French National Assembly and senators to the French Council of the Republic. But, as in the case of the Departmental Councils of France, the powers of the local councils here are also limited.

The French settlements in Africa are in four units. French West Africa and Equatorial Africa are two units. The French Togoland and the French Cameroons are two units. These former mandates are now held by France as Trust Territories under the U.N.O.[1] After the World War I, Syria and Lebanon were also given to France as mandates. These were formerly parts of the Turkish Empire. The French had to concede their war-time pledge of independence to these areas after World War II.

[1] France undertakes to develop democratic institutions and guarantee equality of economic opportunity for all nations of the U.N.O.

Indo-China was made up of the protectorates of Laos, Cambodia and Annam and the French colony of Cochin-China. A French governor exercised real power. There were kings in Laos and Cambodia and an emperor in Annam with nominal powers. After the World War II, agitation forced the French to recognize Annam and Cochin-China as a new state called Viet-Nam (1946). In 1949, the ex-emperor of Annam, Bao Dai, became Head of the State of Viet-Nam, and was allowed internal autonomy. Similar agreements were made with Laos and Cambodia which by 1947 had accepted democratic constitutions. But, a large section of Viet Nam is under a Democratic Republic of Viet-Nam led by a rebel leader, Ho Chi Minh, who carried on war with the French. A settlement promoted in 1954 practically allowed him authority in North Viet-Nam.

CHAPTER III

SWITZERLAND[1]

THE chief causes which strengthened the feeling of unity was the common possession of mountain passes from which the forces of neighbouring powers could be resisted. Thus, the development of Switzerland may be contrasted with that of Austria. In Austria, the various races were actuated by separatism, but here, the various races united voluntarily for mutual protection. The original cantons were German ; but, others joined in course of time. Federation became necessary, because there were three races, German, French and Italian, with three languages, and there were also difference of religion.

The Treaty of Westphalia of 1648 formally recognised the confederation as a sovereign state. But the central government was at first weaker than that of the United States under the articles of the Confederation. Delegates met to consider common matters in a diet at irregular intervals. Every decision had to be unanimous, as no canton could be forced. There was no federal government.

Between 1830 and 1848, unrest developed here. The seven Catholic cantons formed the *Sonderbund* or Separate League in 1843, backed by Austria and France. This led to a civil war in 1847, in which they were defeated. Compare the American Civil War. In 1848, the Sonderbund was dissolved and unity was restored. A federal government modelled on that of the United States was introduced. The *Cambridge Modern History* remarks, "The one region to which the storms of 1848 brought immediate advantage was Switzerland for to them it owes its transformation into a well-organized federal state." In 1874, the constitution was revised and the present constitution took shape. This constitution increased the powers of the central government and introduced also referendum and intiative in the constitution. The Swiss had no previous experience of representative assemblies which they copied from other countries. The consequent defects made them turn to "direct legislation" by the people.

The constitution is very comprehensive and, as in the Weimar constitution of Germany, it contains many things which ordinarily are not put down in a constitution. The delimitation of powers between the centre and the cantons is so detailed that there is little room for any kind of doubt as in the United States as to what is left to the canton and what not. The powers of the canton correspond generally to those of a state in U.S.A. or Australia, and are

[1]Article on Switzerland in the *India Quarterly*, April-June, 1949.

greater than those of a Canadian province. There are roughly three categories of powers, federal, concurrent and cantonal.

The federation controls foreign policy.[1] It controls defence. As in the United States and Australia, the unit can maintain a force ; but the centre has supreme control. There is no permanent federal army and the permanent force is the state militia. By a law of 1907, every citizen of military age is liable to service. The federation controls posts and telegraphs, currency, weights and measures, communications, citizenship, higher education and settlement of inter-cantonal disputes. The federation is bound to protect the cantons against external invasion and internal disorder, and may intervene without being requested to do so by the canton. As in Canada and Australia, the federation collects customs. As in the German Empire, it could collect contributions from the cantons.

Since 1874, the power of the central government has further increased. Shotwell remarks that the cantons, though still regarded as autonomous federal entities, had become increasingly subsidised administrative organs of the federal government. In 1874, it was empowered to issue temporary emergency decrees by agreement with both chambers of the legislature. In 1908, industrial legislation became mainly the business of the centre A law of 1911 made all citizens entitled to insurance against illness, and insurance against accidents was compulsory for all officials and workmen. In 1922, the federation got control of high roads. In 1930, the federal criminal code superseded the separate codes of the cantons. Jurisdiction regarding aerial and maritime transport, banking, social welfare, industrial legislation and public health have passed on to the centre. The power of the federation was concurrent with the states in certain matters like civil law, higher education, regulation of industrial conditions, regulation of the press, regulation of religious organizations, etc. The cantons have all the undelegated powers. Thus, they still remain important elements of the administration. They maintain internal peace, local roads and public works, and look after local government, elections and compulsory primary education. The cantons can make commercial treaties with foreign Powers on their own account Financial resources of the federation are weak, as the cantons control all direct taxation. The cantons also form the agency for the enforcement of federal legislation regarding weights and measures, army, social insurance and administration of civil and criminal law. Unlike the United States, where neither the civil nor the criminal law is uniform, and unlike Canada where only the criminal law is uniform, in Switzerland both are uniform. The cantons are 25 in number, and include 19 full cantons and three cantons divided into six half-cantons.

[1] By a constitutional amendment of 1921, a popular referendum must consider treaties made for a period of more than 15 years, if demanded by 30,000 citizens or 8 cantons. Switzerland's joining the League of Nations was sanctioned by referendum. Thus a forward step was taken in popular control of foreign policy.

These half-cantons have the same status as the full cantons in powers. Of these units, 19 are German ; 5, French and 1, Italian ; 13 are Protestant and 12, Catholic. Luckily, racial diversities do not coincide with religious diversities. Of the total population of about 4,600,000 inhabitants (according to the 1947 census), nearly half are Protestants.

As in the Weimar constitution of Germany, the legislative power of the federation is comprehensive. This legislative power is being increased by constitutional changes which have placed new subjects under federal control. But, as in the Weimar constitution, but unlike that of the United States, the direct executive power of the federation is small. The cantons are left the power to make and enforce the provisions, the federation only carrying out supervision and inspection. Lowell explains the reasons for the centralisation as follows : (1) The small size of the cantons which make them unfit to provide for the services demanded from the modern state, and (2) the comparative ease with which the constitution can be altered.

A comprehensive bill of rights imposes restrictions on both the federation and the canton, preventing violation of individual rights.[1]

The executive in the federation is a plural executive which has legislative and judicial functions also. It is called the Federal Council consisting of seven members elected for four years by a joint session of the two houses. No two members should be from the same canton. One of these members is called the President.[2] The President should not be confused with the Prime Minister of England. Nor is the President even the chief magistrate. He is only a temporary chairman.

Article 102 outlines the powers of the Federal Council. The council is not a cabinet in the ordinary sense. It does not consist of members of a single party. Its members might differ and express their differences publicly. If their measures are defeated by the legislature or by the people, they are not bound to resign. They continue to be re-elected as long as they desire. This leads to long terms of office. For instance, Signor Motta was in the Federal Council from 1911 to 1940. When the constitution was framed the framers discussed the question of a single or a plural executive. The United States, which also considered the question, considered a plural executive as not likely to be harmonious and promote quick decision and action, and so decided in favour of a single exe-

[1] Article 65 provides that capital punishment should not be inflicted for any political offences. Article 4 abolishes all privileges of rank, birth, person or family. Article 12 forbids receipt by citizens of titles, decorations and pensions from foreign governments. Article 106 prescribes trial by jury in all criminal cases. Article 34 provides for sickness, old age and accident insurance.

[2] The President and the Vice-President are elected by the Federal Assembly for one year and are not re-eligible.

cutive. But, in Switzerland, the cantons had been accustomed to plural executives, and cantonal jealousy feared concentration of power in a single person in the centre. So, a plural executive was favoured. The Federal Council can be thus compared to a board for the management of the affairs of the state under the orders of the Assembly, and it may have to carry out measures which it has not framed.

The Federal Council also exercises judicial powers as an administrative court. It also decides on the constitutionality of constitutional amendments. Dr. Dubs, an eminent Swiss jurist, considers this an "organic confusion of powers". But this does not lead to abuse, because the Swiss people enjoy full individual liberty which is safeguarded by a sound public opinion. The council also does not sit in judgment on its own officials, because the federal laws are usually executed by cantonal authorities so the council is able to function as an arbiter.

Though the form is plural executive, it is really a single executive, as in practice each member of the council looks after a department and the president supervises the whole administration. The council works in harmony and open disagreement is unusual. The Swiss people have developed a habit of compromise and submission to the majority. Further, decisions on important questions are made by the Assembly. Unlike the British parliamentary system, there is no need for unanimity. By giving representation to different parties, the whole community is represented in the council. Thus, harmony between the cantons and the federation is kept up. This also gives the government stability and capacity to follow a consistent policy. Capable ministers could enjoy long tenure of power, unlike as in the British parliamentary system. There is no risk of yielding to party cliques which are able to control the elections. The merits of the British parliamentary government are obtained like mutual confidence and co-operation between the executive and the legislature, without the defects of the system. There is no danger of abuse of power, because the Assembly supervises the work of the Council and controls its policy. The government has been compared to a board of business men controlled by shareholders. Interpellation exists; but resembles only the ordinary questioning procedure of England. Bryce in his *Modern Democracies* (Vol. I pages 393-99) greatly praises the executive. Still, the long experience of the members, their power to initiate laws, and superior knowledge of proposed legislation have increased the influence of the federal council over the legislature.

Unlike as in France, the executive is not given general powers to issue decrees to supplement the laws. But the legislature has often given it power to issue decrees in minor matters. During the World Wars I and II when Switzerland kept neutral, the legislature delegated extensive authority to the council to issue ordinances on matters which were hitherto regulated by states. But these war-time powers were merely temporary.

The Council of States and the National Council form the two houses of the Federal Assembly. The Council of States, or *Standerat*, represents the cantons and may thus be regarded as the successor of the ancient diet. Each full canton sends two representatives and each half-canton, one. The members hold their seats for varying periods from one to four years according to the wish of the canton. As the result of this, the Council of States is weak in compactness. Further, its powers are identical with those of the lower house. In the United States, the Senate has its own independent powers apart from those of the lower house. But, the Swiss second chamber is only a repetition of the lower house. Hence, it lacks the independence of the American Senate. Its influence is small; but, it is more purely federal than the American Senate, because its composition is really decided by the cantons.

The Nati nal Council is composed of members elected by proportional representation by all citizens of twenty or over. They hold their seats for four years. The form of proportional representation is the "list" system devised by d' Hondt of the University of Ghent. According to this, each electoral area is given a number of representatives. The voter can cast as many votes as there are seats to be filled; but, unlike France and Belgium, he has also the option of giving all his votes to a single candidate. The quota is obtained by dividing the total number of votes cast in the area by the number of seats to be filled and adding one to the quotient. "Each party list is awarded seats equal to the number of times this quota is contained in the total number of votes cast for the candidates on the list." This system works satisfactorily. The members are paid. Every adult citizen who is not a clergyman can be elected.

The two houses are equal in authority. If there is a deadlock, a conference between the two houses follows. But the upper house does not usually oppose the lower. The two houses, when they meet in joint session, form a body called the National Assembly. The National Assembly elects the Federal Council, the Federal Tribunal and some other officers. It also decides conflicts of jurisdiction. The debates in both houses are permitted in the three languages—French, German, and Italian. Debates are conducted with great decorum and calmness.

A referendum is obligatory for constitutional amendments which are passed by the legislature. Constitutional amendments could also be proposed by the initiative of at least 50,000 voters (Article 120). In both cases, the change must be approved by a majority of cantons and a majority of voters. Even for ordinary legislation, an optional referendum is provided. 30,000 voters or eight cantons may call for this referendum. This optional referendum was extended in 1921 to international treaties having a duration of more than fifteen years.

The Federal Tribunal is located at Lausanne. The judges who are about twenty-eight are elected by the National Assembly. Like

the councillors, they are re-elected as long as they like. Hence, they enjoy practically permanent tenure and their independence does not suffer. Unlike the United States, there do not exist two sets of courts. The Federal Tribunal stands alone as a federal court and has no independent machinery of its own, unlike in U.S.A. Unlike the Supreme Court of U.S.A., it has to apply every law passed by the legislature. Only the federal legislature can decide on the constitutionality of a federal law. The Federal Tribunal can disallow only a cantonal law. It hears appeals, decides disputes between the confederation and the cantons or between cantons and important criminal cases. Thus, its powers are less than those of the Supreme Court of U.S.A. Its authority is further lessened, because it has no jurisdiction on public officials who come under administrative law. But, here also, except the Federal Council which decides questions of administrative law, there were no other administrative courts,[1] till 1914.

Two cantons and four half-cantons were ruled by primary assemblies called *Landsgemeinede.* Unlike other continental countries, democracy has firm roots in local government. Freeman in his *Growth of the English Constitution* regards this assembly as a survival of the primitive German assembly of freemen ; but many authors dispute this and trace it to the manorial court of the feudal times. It works well only because the particular area is small and the population is also small. Administrative functions are relatively simple and the Swiss people are generally of considerable political capacity. Even here, in 1928, the ancient primary assembly of Uri has given place to an elected council. But, the old system continues in others. All other cantons have an elected council of one house. To conciliate religious minorities, proportional representation was introduced from the first. Referendum is obligatory for constitutional amendments. Each canton could revise its constitution subject to three restrictions : (1) a republican form of government is compulsory, (2) the change must not be inconsistent with the federal constitution, (3) revision by popular vote must be provided for. In many cantons, even ordinary laws take effect only after a referendum. But one canton, Freiburg, does not make use of the procedure. In some cantons, ordinary laws should be submitted to the referendum, only on the request of a certain percentage of the voters. The initiative is used in all cantons, except a few, for all laws. The executive in the canton is a Council of State, chosen by the voters. Cantonal government operates like the federal government.

Judges in the cantons are elected. This does not lead to bad results as in U S.A., as the voters, being a small community, have direct knowledge of the candidates and can watch their conduct as judges. They are usually re-elected. The lowest court is that of the

[1] In 1914, a constitutional amendment provided for a federal administrative court.

Justice of the Peace. Above is the District Court, and above that, the Cantonal Court.

The lowest unit of local government is the commune. A few of the communes are cities. But most of them are rural areas. All cantons are divided into communes. Though the commune is subject to more supervision from the centre than in America, it is free from the interference of the legislature by means of special acts which is found in U.S A. Unlike many parts of Europe, local government works well, because democracy is rooted in the localities.

In the German communes, a primary assembly of all citizens looks after local government. In the French communes, there is an elected council. In all communes, the executive power is vested in a board of officials under a *Hauptmann* or a *Maire* who is only a presiding officer. Local government enjoys a degree of freedom not found in other parts of Europe.

Direct legislation, as it is worked in Switzerland, has been the subject of deep study. Maine considers that radical projects and even measures designed for the benefit of workers have been thrown out in the referendum and refers to this conservative nature of the referendum as an example to uphold his thesis that democracy is unprogressive. But, this theory is not valid. People have objected only to laws which are too complicated or which seem to effect too great changes at one stroke. This only proves that the Swiss are cautious and sensible. Some other criticisms have been levelled against the procedure. It is said that the result may not represent popular opinion correctly, because the opponents of the measure take the trouble of voting in larger numbers than its supporters. It is also urged that the people cannot have the capacity to form a correct opinion on the measures submitted to them. This criticism would lose its force if the referendum is limited to matters on which the ordinary citizens can form an opinion and if they do not deal with complicated subjects which are better left to experts. It is also declared that the referendum lowers the sense of the responsibility of the members of the legislature. This might be lessened to some extent ; but still, the efficiency of the legislature is not much affected.

It is urged that prejudice and ignorance may decide the issue in some cases, and it is also expensive and inconvenient. But, it is a useful instrument of political education, as it makes people think. Defects like party scandals and political corruption are avoided. There is also the fact that even a not unfairly elected assembly may misrepresent public opinion. Direct legislation ensures that popular opinion is respected and makes popular sovereignty real. It shows better than an election what the people feel.

Even in Switzerland, opinion on the referendum is divided ; but it deserves neither too much praise nor too much condemnation. Judging from the experience of Switzerland, it has toned down bitterness of political strife. It has not prevented progress and has

helped to keep Switzerland as a country of order and good government. In particular, the evils of the party system are mitigated. Since the people have the right to give their decision on various matters, there is no need of choosing between the programme of different parties. Unlike as in England, the people need not accept a party programme in its entirety. Probably because of this, the Swiss parties have no clear programmes and very little organization. There is also no opportunity to form an opposition party, as in England, to rouse the fear and anger of the people by propaganda about the failings of the party in power, because the people can always throw out measures which they do not favour. As a matter of fact, rejection of a law is not regarded as a censure, and representatives whose measures had been thrown out by the people could almost always be re-elected. Again, while party strife engenders a good deal of personal likes and dislikes, the referendum draws attention to measures instead of men.

The referendum which works successfully in Switzerland might fail, if there was a rigid party organization. But, as Bryce points out, the Swiss people are never carried away by party feelings Unlike some European countries, there are no "Irreconcilables" who are against the existence of the present constitution. People are generally satisfied with economic conditions, because there is a good deal of social equality. There is no gulf between the capitalists and proletariat as in some other countries. The old religious friction has disappeared. There is no incentive to personal ambition, because there is not much patronage to be distributed by the government. "Prizes offered by public life are few." Hence, there is no "spoils" system, and very little corruption. Professional politicians, who get up party organization, have not much scope. We must also remember that the Swiss government is not a party government. The minority is represented in the executive of the federation and the cantons. Party organization can flourish only if the Federal Council is elected directly by the people. Even in the legislature, there is no party machinery. Men much esteemed by the community or who had performed distinguished services are often elected, irrespective of party affiliations. Elections are often uncontested. Even in the legislature, members do not sit according to parties, but, according to the cantons. "The people are hard-headed and businesslike in politics, as in everything else and they have a strong conviction that a capable public servant ought to be retained even if his views do not in all respects agree with those of his constituents." (Lowell).

The people also are fairly educated, intelligent and politically experienced. They are patriotic, honest and unemotional. This kind of character is not the material which can be swayed by demagogues. So, the government is businesslike and non-partisan. The dominance of any party is not a matter of much concern, because all important questions are decided finally by popular vote.

While the referendum is negative, the initiative is positive. Here, the people take steps to legislate directly. Unlike a petition

which is simply a recommendation to the legislature, the initiative calls for action on a measure even if the legislature is against the measure. Every canton, except Geneva, uses this for revising the constitution. In all the cantons, except three, it is used for ordinary legislation. In the federation, it is used only for constitutional amendments. Droz urges that the use of this is a continual peril to the quiet and steady progress of the country, because it subjects the constitution to changes at every moment. As an example of the abuse of this right, the constitutional amendment forbidding the slaughter of animals by bleeding is quoted as an instance of a discriminatory measure against the Jews who have to follow this method, according to their faith. It is pointed that in times of popular excitement, the initiative is liable to be used rashly. But, judging from the experience of Switzerland, the initiative has not been used to affect the political life of the country in ordinary times.

Direct legislation is a native product which has come down from the past and which is completely in harmony with Swiss politics. While a "General Initiative" calls upon the legislature to draft a law on a particular matter, in the "Formulated Initiative" the bill is actually drawn up by a certain number of voters who demand its submission to public vote. "Optional Referendum" is invokable only if called for by a certain number of voters. But, a referendum may be made "compulsory" for all or for certain kinds of laws. Experience of U.S.A. suggests that direct legislation has produced many faulty laws, it gives no opportunity for amendment or compromise and that a bad law cannot be vetoed by the governor. The voters may be misled by phrases or irrelevant considerations. Frequent use of direct legislation may place too heavy a burden on the voter who may fall into a state of fatigued indifference or may give an unconsidered vote. Ramsay Macdonald (*Socialism—Critical and Constructive*) opposes both referendum and initiative. St. Lee Strachey (*Referendum*) supports the referendum, but not the initiative. MacIver (*Modern State*) would use this only for constitutional amendments (as in Australia) or to solve deadlocks between the two houses (as in the constitution of the former Irish Free State). Bryce (*Modern Democracies*) points out that direct legislation gives good results only in a small country where the population is homogeneous, intelligent, unemotional and not dominated by party organizations. He says that only Switzerland satisfies these conditions. He urges that there is nothing to show that it has reduced the quality of the members of the legislature, whether in the centre or in the cantons, and it has facilitated the continuance of experienced members of the executive and the legislature in office.

The only drawback which can be urged against the initiative is that, if it takes the form of the completely drafted bill, it allows no opportunity for discussion and consequent compromise.

Since 1848 down to 1945, there had been 139 uses of direct legislation in federal matters. Of these, only 65 proposals were

approved. In the cantons, its use is oftener. The constitutional initiative seems to have been the least popular.

As Dicey says, Switzerland proves that parties can exist without party government. The parties have been generally stable. Except the Socialists, and a few groups, there has been new political party after 1874. In 1848, there were two groups : the Liberals who believed in individualism and the Radicals who favoured a certain degree of state intervention. These two parties joined together to set up the federal constitution. A Conservative Catholic party developed which, while strongly supporting the Catholic church and the rights of the cantons, was anti-progressive. But, as a result of Papal encyclicals, it now favours betterment of labour conditions. After 1890, the Liberal party declined The Radical party favoured social welfare legislation. The Farmers' Party, which was more conservative split off from the Radicals in 1918. The parties of the Left form a group of various sections and are strong only in the Protestant cantons. The Social Democratic party grew up in 1891. But it is not so aggressive as the Socialist parties in other countries. The following observations of Lowell are noteworthy : "In a community which has enough native honesty and intelligence to prevent personal corruption in its public men, and which does not require the friction of parties to stimulate progress, it is certainly a great advantage to get rid of the agitation, the partisanship, and the absence of a perfectly ingenuous expression of opinion which are inseparable from party government." The parties have practically little organization or machinery. Activities of political associations are unimportant. Elections rarely arouse public enthusiasm.

Lowell compares Athens and Switzerland as examples of the most complete types of democracy in the ancient and in the modern world. In Athens, the administration was conducted directly by the people. But the people did not interfere much in legislation because of the ancient idea that the law should not be much altered. In Switzerland, the opposite is the case. The people completely control legislation. The government, on the other hand, enjoys a singularly stable tenure, without much change by the people. Lowell regards Switzerland as, on the whole, the most successful democracy in the world.

The Swiss constitution has great importance because of the following considerations : (1) The federal form of government was first used here in its proper form. (2) A plural executive which was not responsible to the legislature formed a unique departure in the evolution of constitutions. (3) Direct legislation through the referendum and the initiative was born here. The executive and the legislature form really the agents of the people. (4) The method of proportional representation was worked here for the first time successfully. (5) As in the ancient city states, primary assemblies were a part of the government. (6) Like the English constitution, the Swiss constitution was the product of evolution from a remote past. (7) The state proved that national unity can be achieved, in spite of religious and linguistic differences. While Dicey regards the con-

stitution of Canada as a copy, though not a servile one, of the constitution of U.S.A. and the Swiss constitution repeats some of its features, yet he notes that the Swiss constitution differs in two respects : (1) There is no complete separation of the executive and the judiciary (which he regards as a flaw in the Swiss constitution). (2) The sovereign power of the people can be easily brought into play and guard their rights. Hence, the Federal Court is not of equal importance with the Federal Assembly, according to him.

Dicey comparing American Federation with Swiss Federation, comments that the latter is weak where the other is strong. Each country had need of federation. Each country had a democratic basis of government. Each country had to face a civil war. But, there were differences in size and population. Past history was different. While America based itself on English ideas, Switzerland worked on the framework of Continental ideas. Hence, there were differences in political development. The Senate is the most admirable of the American institutions. But, the Council of States in Switzerland is distinctly inferior. The judicial system of the United States is strong. But, the Federal Tribunal in Switzerland does not command much prestige. The least admirable part of the American constitution is the unhealthy development of the party organizations. In Switzerland, there is no corruption or other evils due to parties. In America, the relations between the executive and the legislature are often hostile. In Switzerland, the executive works in harmony with the legislature. While thus having the merit of a parliamentary executive, the Swiss Government enjoys also the advantage of a non-parliamentary government in having a permanent tenure independent of the legislature.

The sturdy patriotism, good sense and wise leadership which had united the different racial groups of Switzerland into one state continues to animate the people. The people are wisely cautious. Since 1874, there have been 70 attempts at amending the constitution. Of these, approximately only half have succeeded. But, the people are not blind to the need for change. The old *laissez faire* liberalism of the 19th century has given way to state intervention. Personal freedom in economic matters has been subjected to control, owing to the need for social and economic security. Thus, in 1924, a constitutional amendment provided pensions to widows, orphans and the aged. In 1947, old age insurance was voted by referendum.

Officials of the civil service are appointed on the basis of competitive examinations and there is absence of nepotism and corruption. As a result, the administrative system is efficient.

The perpetual neutrality of Switzerland (guaranteed by the Powers) is based on the fact that the control of the strategic Alpine passes in the heart of Europe should not be in the hands of any great power. The state is small and is only about 16,000 sq. miles. Yet, the population is about four millions. Hence, industry and trade become more important than agriculture. Industry is helped by hydro-electric power from the abundant water resources of the country.

CHAPTER IV

ITALY

THE process of the development of Italy as a nation was long delayed by the Holy Roman Empire which, while it claimed power over Italy and thus prevented the formation of a state of Italy, was at the same time too weak to consolidate Italy into a single state. This disunity was also helped by the Pope who dominated over central Italy. In course of time, Italy passed largely under foreign rulers who held big chunks of Italian territory. Austria controlled Milan, Tuscany, Modena and a number of the other states. There were petty monarchies in Lucca and San Marino. Venice and Genoa were ruled by oligarchies. The Spanish Bourbons held Naples and Sicily. Sardinia which included Piedmont was a separate kingdom. There were the Papal States in the middle. Everywhere absolutism prevailed resulting in oppression and corrupt government. After the French Revolution, Napoleon upset these political arrangements and set up in Italy various republics modelled on the French republic. Thus, he set up the Cispadane Republic in Modena and a few other states. In Lombardy, he set up a Transpadane Republic. In 1797, both were united under the name of the Cisalpine Republic. Venice was given by him to Austria. Genoa was converted into the Ligurian Republic. The Papal States became the Roman Republic. Naples was converted into the Parthenopean Republic. When Napoleon became emperor, the whole peninsula for the first time was unified under him. Thus, Napoleon, for the first time, planted the seeds of unity in Italy. After his fall, once again, Italy became disunited into ten states : (1) Sardinia, (2) Lombardy and Venitia which were under Austria, (3) Duchy of Parma, (4) Duchy of Modena, (5) Duchy of Lucca, (6) Duchy of Tuscany, (7) Duchy of Monoco, (8) Duchy of San Marino—all these Duchees were dominated by Austria, (9) Papal States and (10) Kingdom of Naples and Sicily. Austria was the chief barrier to unification and the building of the Italian nation was essentially the work of leadership provided by Sardinia under her king, Victor Emanuel, and her minister, Cavour. In spite of obstacles, Italian patriotism finally triumphed.

The constitution of 1848 granted to Sardinia was extended stage by stage to the new areas taken over. Thus, the Italian constitution was based on the constitution of Sardinia. It formed the shortest written constitution containing mainly general principles. Hence, it had to be supplemented by usage and by later legislation, but the flexibility of the constitution protected it from being destroyed by the later events which took place in Italian history.[1]

[1]A translation of the *Statuo* is in McBain and Rogers, *The New Constitutions of Europe* (1923).

Italy was ruled by a monarchy which was descended from the dynasty of Sardinia. Succession to the crown was hereditary according to the Salic law. As in England, the monarchy was constitutional and royal veto was never exercised.

Like England, the executive consisted of a cabinet responsible to the legislature. But, as in France. the ministries were unstable owing to factions in the chamber. These groups, sometimes united and sometimes divided, were always forming new combinations. Ministers also were divided, and very often a new cabinet contained several members of the old cabinets. The great Italian statesman, Cavour who had much to do with the formation of Italian unity, held that "the worst of chambers is better than the most brilliant of ante-chambers" and supported parliamentary government. Had he lived, the path of parliamentary government might have been smoother. But, the Italian people were ignorant and illiterate. There was also a great social gulf between the north and the south of Italy. The south was plagued by brigandage which had been an inheritance from the old period of oppression and despotism.

As in France, the government was highly centralised. This centralised government was copied from France with all its defects, as Lowell remarks, but without its advantages. He remarks that, at first sight, it seems strange that Cavour and his successors, with all their admiration for the English institutions, should have turned to the French bureaucracy as their pattern. He explains that the reasons might be as follows : (1) The rule of Napoleon had made the Italians familiar with the French method of administration ; (2) It was necessary to consolidate the provinces under a strong government to offset possible foreign attacks ; and (3) Italian society being badly disorganized and full of disorder needed a highly centralised system of government to deal with the disorder. As a result of this centralisation, the government had vast powers. As in France, it became the fashion to enact laws in general terms, leaving the ministers to make detailed provisions by their own decrees. This power to issue decrees was delegated even to subordinate officials. Very often decrees were issued even on matters outside this delegated legislation and; sometimes, even annulled laws passed by the legislature. The unsettled state of the country increased the tendency to disregard the rights of the citizens. The power of the executive to issue decrees was used more extensively than in France. The government officials, therefore, exercised arbitrary powers. Being poorly paid and holding their office at the pleasure of the government, the civil servants tended to be corrupt and to serve the interests of the corrupt politicians in the legislature.

Owing to the multiplicity of the political parties, the king had great opportunity to exercise his discretion. This also helped to impair unity in the ministry, leading to friction.

The legislature consisted of two houses—the Senate and the Chamber of Deputies. The Senate resembled the English House of

Lords in that it included princes of the royal house who were members by hereditary right. But, as in Canada, there was a proportion of members who were nominated for life. These must be over forty years of age. They must be chosen from persons who held high office, church magnates, citizens of eminence and persons who paid a certain minimum of taxes. Thus, it was appointed from public functionaries, men of achievement in public service, science and literature etc., and the great landed proprietors of the country. But, this power of nomination was often used for the purpose of influencing the political complexion of the Senate. Because of this, the Senate became weak and powerless. It has been said that in volume and range of legislative activity, the nominated Senate of Italy was distinctly inferior to the elected Senate of France. By a decree of the crown, the Senate could function as a high court of justice to try cases like treason and to try ministers impeached by the lower house.

The Chamber of Deputies was elected for five years. Before 1912, the franchise was very much restricted. The voter should be an Italian citizen of the age of 21 or over. Till 1912, the law was that the voter should be able to read or write and should have passed the examinations in the subjects included in the course of compulsory elementary education. This provision was due to the great problem of illiteracy which made manhood suffrage impossible. In 1912, manhood suffrage was introduced along with proportional representation and, in 1919, franchise was extended to women. But even then, a large portion of the electorate was illiterate. The country was divided for the purpose of election into districts electing two or more members by proportional representation.

As in England, the presidents of the two houses must be non-partisan. But, as in France, each house was divided into sections, called *Uffici*, for electing the committees of each house. This system followed a French custom which France later abandoned. Only the committee of the budget was elected by the whole chamber on the proposal of the government. The procedure of interpellation was also copied from France. But, the debate and vote on the question was postponed to a later date to avoid voting in the heat of the moment. So, the ministries could have a longer term of life than in France. But the ministries were even less united than in France. The composite character of the cabinet led to lack of co-operation, and, thus, parliamentary government did not work satisfactorily.

All money bills originated in the Chamber ; but with regard to other bills, the two houses possessed the same power. A bill rejected by the other house should not be reintroduced during the same session. But, as mentioned already, the Senate was really powerless and had no legislative independence, because it could be "swamped" by nominees of the Government.

Since the cabinet (unlike as in France) could dissolve the chamber and since the government could influence the illiterate voters in the elections, the cabinet was not so weak as in France.

Lowell remarked long ago, "One of the most striking features in Italian public life is the personal struggles of the chiefs of the rival factions in the same party. The Italians are very different from the French in not being attracted by abstract theories to form a number of groups, each clinging obstinately to an ideal form of government. But, while practical and not so excitable, the Italian is far more prone to form cliques in order to obtain some private advantage by the use of public authority." He points out that the chief principle of the clique is the relation of patron and client. Local administrations tended to be abused for personal ends, because many of the deputies were in league with local cliques and considered themselves as their agents to secure favours for them. Lowell also contrasted the Italian and French parties. He considered that the French parties were formed mainly on national questions and that, though the deputies tried to get favours for their local interests, their election was based mainly on national issues. He explains what he means in this way : "The question who shall be the candidate of the Radical party depends on local considerations ; but, the question whether the district shall be represented by a Radical at all is determined mainly on national grounds." But, in Italy, he says, "the election turns mainly on local and personal issues". In short, the exceptional greed for private favours was accompanied by a comparative indifference on public issues, according to him. He remarks, "The deputies are unpledged to any definite policy and are ready for any coalition to further their own ambitions or their local interests. Such cliques can be suppressed only when the want of mutual confidence and absence of respect for law and government disappear by enforcing public authority vigorously and affording absolute security to the people so that every man may rely on the state for protection and not on his powerful neighbours." This became impossible. Political inexperience of the people, their illiteracy, strong localism, and tendency to the growth of factions led to the growth of many political groups which had no clear-cut programmes. The activities of these groups in parliament prevented the government from acting vigorously against local "bosses".

Economic conditions were adverse. Less than 30% of land was fit for cultivation, while population was increasing. The standard of life was low. Emigration was extensive to countries like U.S.A. ; but this was checked by those countries. Even now, the country is overpopulated and its population is about 47 millions. Only a third of the land is fertile.

The following parties were functioning before the World War I. The old Catholic Party was reorganized under the name of the People's Party with a broader programme. One of the important questions which led to the growth of this party was the relation of the state to the Pope. The capital of Italy is also the capital of the Pope. When the king of Italy occupied Rome, the Law of Papal Guarantees of 1871 allowed the Pope a number of prerogatives like separate postal services, separate diplomatic representation etc. But,

the Pope treated himself as a prisoner and avoided any acknowledgment of the legality of the Italian government. He, therefore, held aloof from co-operation Hence, the clericals who, as in France, formed the backbone of the conservative section of the people, boycotted politics. Because of the lack of a conservative party, the Liberal party broke up into "a number of factional groups dominated by individual leaders, and unwilling to unite except in temporary coalitions for some momentary advantage". Further, this led to the development of a Socialist party. The Pope was, therefore, forced to allow freedom to the Catholics to take part in politics to protect social order. The ban on Catholics voting in parliamentary elections was relaxed in 1905. Thus the feelings of the Vatican (the Pope) towards the Quirinal (the Government) became less bitter than before. But, even now, the breach between the Pope and the government still continued and no direct relations existed between the two. The People's Party, though anti-Socialist, was progressive.

The next important was the Socialist Party. It greatly developed owing to the dissatisfaction of the Italians with the older parties, the practical character of the Socialist programme and the relatively able leadership of the Socialists. There was a small Republican party, but it was weak and powerless, as the royal family was popular. In addition, there were a number of groups whose membership and programmes were subject to rapid and bewildering changes and which attached themselves to personalities rather than principles.

The governmental system, in theory democratic, was in practice full of abuses. Parliament rarely stood for its rights, and sometimes expressly gave the government the power of making sweeping changes by its own ordinances. Lowell remarks, "The preference for administrative regulations which the government can change at any time over rigid statute is deeply implanted in the Latin races and seem to be specially marked in Italy."

In spite of these handicaps, some progress was made. Industry was encouraged and manufactures developed in places like Milan. Railways were built. The Alps were tunnelled. The health of the Campagna was improved by scientific drainage. A public system of education was begun.

This was also copied from France and was highly centralised. The old territorial regions were abolished and new artificial areas were created, copied from France. Thus, there were provinces ruled by prefects aided by councils. Below these were the *Circondari* which corresponded to the French *Arrondissements*. Below these were the *Mandamenti* which corresponded to the French cantons. At the bottom were the communes which were under *Syndics* helped by councils. Only the provinces and the communes had any vitality. The commune, which was the least artificial, was the most vigorous of the local bodies. It elected its *Syndic* for a term of three years. The whole field of local government was affected by party politics. Thus, as in France, the prefect helped his political party at the time

of the elections. The resources of the local bodies were inadequate. Thus, many large cities were facing insolvency. Further, as in France, the councils had only limited power.

The kingdom was divided into districts for judicial purposes, each district having its own court. These districts were grouped into larger areas with their own courts. Lastly, there was a Court of Cassation in Rome which was the final court of appeal. Originally, there were five independent Courts of Cassation in Turin (which was the old capital), Florence, Naples, Palermo and Rome. None of these courts was bound by the decision of the other, and all had equal jurisdiction within their limits. This led to friction and was against the unity of the country. In 1923, all these were abolished, except the court at Rome. As in France, judicial precedents are not binding. In criminal justice, the jury system was used ; but, it did not work well. Administration of justice was also often interfered with by politicians, and the judiciary was not independent of the executive. As in France, there was a separate series of administrative courts culminating in a Council of State.

After the World War I, many of the Socialists became Communist and, in the election of 1919, they became the largest single party in the chamber. The government was forced to give them a share in the ministry. They were also able to win many concessions. Meanwhile, disorder spread in the country, the workers indulging in riots and strikes. The government was afraid to put down this disorder and was weak. This gave opportunity to the Fascists.

Mussolini, who had been a Socialist, was expelled from the Socialist Party, when he founded the *Popolo d'Italia* in 1914 to advocate intervention in the war. He then founded the Fascist Party, with the object of inducing Italy which was neutral to join the war on the side of the *Entente* Powers. His personality and oratory helped to strengthen the Fascist Party.

After the war, this was reorganized to enforce law and order against the disorder spread by the Communists. The leader, Mussolini, in 1920, gave it a military organization and revived a strong spirit of nationalism. He was helped by dissensions amongst his enemies. Alarmed by the excesses committed by extremists, the moderate section turned away from Russia which was the chief inspirer of the Communists. When the Communists proclaimed a general strike, the Fascists defied them, recaptured from them the factories they had seized and broke up the local soviets which they had formed. In 1921, Mussolini got the government from the king and became the prime minister. The party was strengthened by those who had lost faith in the discredited parliamentary government, and anti-Socialist groups. Mussolini gave the party a strong organization. Provincial councils of the party consisted of local delegates. These sent delegates to the National Council or a Grand Council which met every year. This chose a directory of ten which formed

the executive of the party. Fascism has been called the "dictatorship of the Capitalists," though it professed to place the well-being of the people against any class and to end all class strife by asserting the supremacy of the state and proclaiming the solidarity of the state. During 1922-25, the dictatorship was not yet completely established. Leaders of the opposite groups were still allowed in parliament and Mussolini's cabinet included other party leaders. But, parliament was forced to pass the electoral law of 1923 by which all opposition was crushed. In the election of 1924, Mussolini was, therefore, able to get a Fascist majority.

The following are the causes for the Fascist success: (1) Nationalists who dreamed of an imperial Italy were disappointed at Italy not gaining much from the World War I. (2) Fear of the possessing classes at the rapid growth of Socialism. (3) Economic collapse after the war. (4) King Victor Emanuel III preferred Fascism to a government dominated by the Socialists. Salvemini points out that the workers who seized the factories withdrew even before Mussolini's march on Rome and the danger of a revolution had disappeared.

Still, it is true that parliamentary life was discredited. The majority of the middle classes paid only lip service to liberalism. A strong minority supported the Fascists. Mussolini's book on Fascism not only stressed the supremacy of the state and solidarity of the various classes, but also admiration of the old Roman Empire and idealisation of war.

After Mussolini secured his majority in the chamber, he began further consolidation of his power.

To keep this majority, further repressive methods were adopted. The murder of an opposition leader called Matteotti led to some excitement which compelled Mussolini to make some concessions. An electoral law of 1925 restored the electoral system to its 1919 basis; but, the government soon expelled the opposition from the legislature. In 1925, Mussolini felt he could go further. A law of 1926 gave the government power to enact laws by royal decrees on urgent occasions. All political parties other than the Fascists were suppressed. Mussolini took the title of the Head of the Government. He was made independent of parliamentary censure. Anyone who disparaged him was to be imprisoned. Parliament became only an advisory body. In 1928, the old parliament was dissolved and an electoral law remodelled its composition. Even by 1922, the Fascist congress had decided in favour of what was called a corporative state based on corporations. Thus, all citizens would be grouped into syndicates.

A syndicate was formed for every occupation in the district, one for employers and one for workers. It was controlled by the state and it looked after all matters concerning work. These syndicates were grouped into federations and these federations were formed into

confederations, separately for employers and workers. Corporations were created which included delegates from confederations of employers and workers, some technical experts and some members of the Fascist party. These corporations were presided over by a person chosen by the state. There were twenty-two such corporations representing industry, agriculture, commerce, vineyards, livestock and fish, textiles, metallurgy and mechanics, paper and the press, gas and electricity, communications, tourists, entertainments, credit and insurance, professions and arts. These corporations advised the government and adjusted disputes between the employers and the workers. A National Council of Corporations representing these corporations co-ordinated their activities. But, its function was only advisory, and its decisions were subject to government approval. No syndicate should have any international affiliation without state consent. For every profession, there would be one corporation legally recognized by the state. The state would have the right of supervision, control and the right of appointment of the syndicate officials. The corporations should look after production and settle all disputes between employers and workers. If the corporation failed to bring about a settlement, the case would be taken for final decision to a labour court.

Even by 1926, syndicates of workers and employers had been formed, organized locally, regionally and then on the provincial and national basis. All these syndicates would be controlled by the government. No syndicates were permitted in the defence forces, judicial service and certain sections of the civil service. In other cases associations of civil servants could be formed, but could be dissolved at any time by the government. Strikes and lock-outs were forbidden and the whole machinery was supervised by a Ministry of Corporations.

The councils of the corporation took over the functions of parliament. By the electoral law of 1928 the whole of Italy voted as a single electoral constituency. Deputies to the parliament should be elected by the syndicates of employers, employees and professional classes and by other social bodies to be fixed by the government. These should make a list of thousand persons ; but, of this, the Fascist Grand Council would select four hundred adding any person of their choice. The final list would then be submitted to all males of twenty-one who had paid their subscriptions to their appropriate syndicate.

Fascists held that political life was not the sphere of women. So, women had no political rights. This example was imitated by the Nazis in Germany. In elections, the voters could say only "yes" or "no".

The four hundred members thus chosen formed the Chamber of Fasci and Corporations. This assembly was elective only in name. Any deputy could be removed by the Fascist Grand Council. No

subject could be discussed by the house without the previous leave of the Head of the State. Any government bill not passed by the house within thirty days could be enacted by decree. By 1928, the Fascist Grand Council became the advisory body of the government, and all cabinet ministers were to be *ex officio* members of this council. It selected the ministers and advised the Head of the State. But, really, it was only the tool of Mussolini. It became the centre of the machinery of the state, uniting the cabinet, the legislature and the party.

Thus, from 1925 to 1929, the dictatorship was legally established though, nominally, Italy was still a constitutional monarchy. The Fascist party was not only recognised by the state but its Grand Council was given function of a constitutional character. By 1929, the *Partito Nazionale Fascista* (the National Fascist party) became a definite organ of the state. The *Duce* (leader) of that party was also the *Capo del Governo* (Head of the Government). He had all power. He controlled the armed forces. He made appointments to all posts of the government and no measure would come before the chamber without his approval. The high officials of the party were all nominated by him and the party controlled the government. The Senate still continued. It was nominated by the king on the advice of the head of the government from certain categories of citizens like land magnates, rich taxpayers, generals, admirals and persons who rendered meritorious service to the state. Mussolini appointed Fascists as new nominees.

There was no charter of political right. All political cases were tried not by ordinary courts but by courts made up of Fascist officials. The juries were replaced by assessors. No lawyer, journalist or doctor should practise without the consent of the local Fascist committee. Censorship of the press and ban on free speech prevented any legal opposition. Even civil servants and judges could be dismissed for opposing the government. No meetings could be held without the consent of the police.

In local government, there was appointed an officer called *Podesta* in 1926 in all the communes to hold office for five years and exercise all powers. In big communes he was helped by an advisory municipal council. The Podesta and his council were nominated by the government. The country was divided into provinces under Prefects with nominated councils (which had only advisory functions).

The five Courts of Cassation which existed before were consolidated into one Court of Cassation which heard appeals from lower courts. Trial by jury was abolished. Political offences were tried by a Special Tribunal for the Defence of the State created in 1926. The police had special powers to send undesirable citizens to concentration camps. The law was revised to give special privileges to the Fascists. Administrative Courts were prevented from acting against government by the nomination of Fascists to those courts.

It is undeniable that Mussolini carried out many good reforms. Public services were efficient. The Italian currency, *lira*, which was falling in value owing to economic weakness, was stabilised. Autarchy was promoted. Agriculture was encouraged to make Italy self-sufficient in corn. The Pontine marshes were reclaimed for agriculture and this incidentally eradicated malaria which was prevalent here from ancient times. Another important service was the Concordat with Pope Pius XI in 1929 which settled the quarrel between the Pope and the state. According to this, a certain area surrounding the Vatican Palace in Rome was carved out into the Vatican City where the Pope was to exercise independent temporal authority. This state will have its own citizens. The Pope will exercise legislative, executive and judicial powers. But, these powers may be delegated to the governor of the state, and to the courts set up in the state by the Pope. The Pope has his own flag. The governor of the state exercises all executive powers and is responsible to the Pope.[1]

No attempt was made to smoothen hostility between capital and labour and no free trade union activity was allowed. The idea of class war was condemned. All workers must join a Fascist syndicate. Disputes were compulsorily settled by officials appointed by the state called labour magistrates. Capitalism and private property was maintained intact. Thus, the capitalists were accepted as responsible to the state for efficient control of production. But, the state could intervene because of political considerations. The Fascists exalted the state over the individual and over any class interest.[2]

In foreign policy, the Fascists were imperialist with strong colonial ambitions. Italy was resentful that, though it was an exclusively Mediterranean power geographically, England controlled the entrance to the sea at Gibraltar and Suez, besides holding Malta near Italy. France and England controlled North Africa. Thus, Italy was virtually locked in, while she was overpopulated and had no resources. The Fascists wanted to revive the glory of the old Roman Empire and idealised war.

Unlike Communism which ignored the past, Fascism venerated the past. The Communists believed in the equality of all men and had no respect for private property unlike the Fascists. Unlike Russia, the old government was not completely destroyed, but altered to the needs of the revolution. But, both Communism and Fascism started as extra-constitutional movements. Both despised Western democracy and believed in force and propaganda to put down opposition. Both abolished separation of powers as there is only one party in the government and in the legislature, and the courts are also controlled by it. Both had a state planned economy and both

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[1] See *States man Year Book*, 1929. for a map of the Vatican State.

[2] While the workers were exploited, government control led to a corrupt bureaucracy which affected production.

regimented thought in all respects, including Science and Research. Both exalted the state.[1]

The Fascists had no belief in the judgment of the masses who were held to be misled by demagogues. Government should be in the hands of the really able citizens. Thus, democracy was repudiated. Parliamentary government was also repudiated, because the Fascist view was that individuals should be grouped in functional associations and this functional basis should form the basis of constituting a legislature. This legislature should play a subordinate part, for the real government must be with the executive. As Gettell (*Political Science*) remarks, "The Fascist theory combined the idea of social solidarity and public service as urged by Duguit with the Syndicalist form of economic organization for the purpose of maximum economic production." Such a state, called the "Organic State", was held to be the highest authority unifying and harmonising individuals and groups. Mussolini claimed that weak governments might suit rich nations (or pluto-democracies, as he called them) which only wanted to retain what they possessed ; but poor nations like Italy could not afford the luxury of democracy. The state must be superior to all individuals and groups. The state is also the nation armed with a mission. This exaltation of the National State led Fascism to oppose any international control. The state must look to its own interests and must expand, if justified by national interests. Hence, militarism and imperialism were necessary. It was the duty of the citizen to subordinate his interests to those of the state and sacrifice himself in war.

The roots of Fascism can be detected in earlier Italian writings. Vico subordinated private interests to those of the state. Machiavelli upheld the rights of the state and the Italian writer, Rocco, even claims that Fascism was developed from his doctrines. Mazzini emphasised nationalism, the old Roman traditions and the duty of sacrifice for the state.

In 1943, Italy faced defeat in the World War II. Mussolini resigned and was succeeded by Marshal Badoglio who dissolved the Fascist party and abolished the title *Duce*. He continued to be the head of the state and prime minister. But, his power did not endure. The old constitution was restored. But, in 1946, the people approved a new constitution drawn up by a constituent assembly by which Italy became a Republic (January 9, 1948). Article 1 vested the sovereignty in the people. The Republic, according to article 4 of the constitution, renounced war as an instrument of conquest. The republican government could not be altered. Fascism was outlawed. Workmen were guaranteed the right to strike. Free and compulsory education was promised to every child. The Concordat with the Pope was accepted and the state and the Catholic church were declar-

[1]Article on ' Fascism" in the *Modern Review*, January and July, 1932. Article on the "Italian Corporative State" in the *Pol. Sc. Quarterly*, June, 1931.

ed independent in their own spheres. But, no special restriction should be placed on any religion. Women were given the right to vote and to public employment on equal terms with men. The state must provide work for the unemployed. Article 38 provides for insurance against accidents, disease and old age.

The parliament would consist of two houses. The Chamber of Deputies would be directly elected by universal adult suffrage[1] and by proportional representation, on the basis of one deputy for every 80,000 people. The life of this chamber would be five years. The Senate would consist of members elected for six years. For this election, Italy has been divided into twelve regions. The regional councils will elect one-third of the senators. The remaining two-thirds will be directly elected by people over twenty-five through proportional representation. The head of the state would be the president elected for seven years by a joint session of the two houses and delegates from each regional council. He must be over 50.

The Cabinet is formed from the majority party in the parliament and is responsible to parliament. It must receive the support of the Chamber before it enters office. But the defeat of a bill does not involve its resignation. Its fall must be brought about only by a definite vote of censure. Money bills originate in the lower house. The Senate has never been much important. Disputes between the two houses can be referred to a referendum. Initiative is also provided. A Constitutional Court like the Supreme Court of U.S.A. is to consider the constitutionality of laws. Its judges are chosen for nine years by the parliament.

A new electoral law of 1953 assigned two-thirds of the seats in the Chamber of Deputies to any party which got 50% of the total polls, so as to avoid ministerial instability. But this law was repealed in 1954, owing to opposition against it.

The country has been divided into twelve regions which largely correspond to the old provinces like Sicily, Sardinia, South Tyrol etc. These are granted a certain degree of autonomy under regional councils. But their acts are subject to review by parliament.[2]

The following are the chief parties. The Christian Democrats are the successors of the old Clerical Popular Party. It is anti-Communist, but advocates moderate social reform. The Socialists stand for nationalisation of all industries. There are a few Rightist groups including Monarchists. The Communist party is the strongest in Europe outside the Soviet Bloc and is maintained by the deep contrast in wealth between industrialists and workers and between landowners and peasants. The previous heritage of Fascism and the misery of the people increased its influence. The population

[1]The voters should be aged 21 or more.

[2]A summary of the constitution is found in the article "Political Trends in Italy" in the *India Quarterly*, April-June, 1949.

problem, particularly in South Italy, is acute. The Socialists also show a tendency to co operate with the Communists. But the Catholic Church has thrown its influence against the Communists Government also has resorted to land reforms like redistribution of the estates of landowners to peasants after paying compensation to landowners. In 1955, a ten-year plan was begun for industrializing the poverty-stricken South Italy.

There was tension with Yugoslavia over the area of Trieste. After World War I, this port which was dominantly Italian in population came to Italy. In World War II, Yugoslavia occupied it. A treaty made by the victorious Powers with Italy in 1947 divided the area into two zones. Zone A (which includes the port) was under British and American control. Zone B, the area south of Trieste, was under Yugoslavia. There was to be a common governor, but owing to disagreement between the victorious Powers, he could not be appointed. This division kept up national resentment between Italy and Yugoslavia. This long-standing dispute was settled in 1954 by partitioning the area. Zone A, including the city of Trieste, which is mainly Italian, goes to Italy; but Italy will maintain free port facilities at Trieste. Zone B, which is mainly Slovene, goes to Yugoslavia. Both states guarantee minority rights.

Italy lost the greater part of Venezis Guilia and several Adriatic islands to Yugoslavia. The Dodecanese islands went to Greece. Certain minor revisions of the frontier with France were made. Italy also lost most of her colonies. Of the old colonies. Libya has now become independent. It covers an immense area of about 700,000 sq. miles, consisting of the former Italian colonies of Tripolitania and Cyrenaica. The land after independence is a monarchy, the Emir of Cyrenaica becoming king. A parliament of two houses has been set up. The Senate consists of half nominated by the king representing equally the three provinces of Tripolitania, Cyrenaica and Fezzan, and half elected by the provincial legislatures. The House of Representatives is elected by the people. Each province is under a *Wali* (Governor) appointed by the king and aided by an Executive Council and a Legislative Council (three-quarters of which is elected).

Italian Somaliland is still administered by Italy, but under the trusteeship of the U.N.O. The ancient African kingdom of Ethiopia was conquered by Mussolini; but it became independent after World War II. A part of the old Italian colony of Eritrea has been given to Ethiopia. Ethiopia is under an Emperor who is helped by a Prime Minister. There are departments of administration and a modern army, air force and police. There are no political parties. The Emperor and the Prime Minister are accessible to people in public audiences. After World War II, peasants were freed from old feudal obligations and helped to become owners of land. The former Italian colony of Eritrea forms an autonomous unit in the empire.

Malta to the south of Italy is a British colony. In 1920, it was granted self-government except in certain reserved matters like

foreign policy, defence, coinage, immigration etc. The legislature consisted of a Senate and an Assembly. But, the executive government was a dyarchy. Nationalist feeling was roused by the development of Fascism in Italy and the church also interfered in politics. Hence, the constitution was suspended in 1930. On the report of a royal commission, it was restored in 1932. But, the ministry was dismissed in 1933, because it forced the use of the Italian language on the people and the governor took over the government again. It was only in 1939 that self-government was restored.

We shall now pass on to Spain and Portugal which have imitated the authoritarian form of government from Italy.

SPAIN

It is often said that the Iberian peninsula seems to be favoured by nature to be one geographical area with one nation. But, the peninsula developed in other ways. The north-eastern area had a language, culture, and traditions of its own. In the central north, adjoining the corner of the Bay of Biscay, there was the small but assertive nationality of the Basques. On the west, Portugal developed as a separate nation with its own tradition and language. Except Portugal, the rest of the peninsula ultimately formed the country of Spain. Even then, provinces divided by the mountains lived a separate, isolated life.[1] Before the World War II, the population was only twenty-three millions, though Spain was the third largest country in Europe. Agriculture was ill-developed and the standard of life is low. There is not enough land for the people.

Napoleon overthrew the Bourbon kings of Spain and set up his power in Spain. He placed his brother, Joseph Bonaparte, on the throne. Joseph tried to strengthen his position by a number of reforms which abolished the relics of feudalism and the Inquisition. But, national hostility against French control was expressed in 1810 by an assembly of deputies indirectly elected by the people which met at Cadiz. Though this body called itself *Cortes*, it was not the old mediaeval assembly of the three estates. A constitution was drawn up by it in 1812 influenced by the principles of the French Revolution like sovereignty of the people, equality before law etc. The king was to rule the country with seven ministers ; but his powers were cut down. The legislature was to consist of a single chamber elected for two years by manhood suffrage, but indirectly. Some features of the French constitution which were unsatisfactory were adopted blindly, *e.g.*, disqualification of ministers to become members of the legislature. The constitution was really the work of a small minority and it was never submitted to the people for approval. It was also never put into complete operation. After the fall of Napoleon, the restored Bourbon king, Ferdinand VII, restored absolutism. The army, the nobles and the church disliked the new constitution and the masses of the people understood democratic government. But the despotism caused much discontent. After the death of Ferdinand in 183?, the

[1]Localism is strong, particularly in the regions peopled by the Basques and the Catalans.

queen became regent for his daughter, Isabella, whom the king had made his heir by a Pragmatic Sanction, setting aside the Salic Law. The king's object was that the throne should not go to his brother, Don Carlos. The regent got the support of the liberal groups in the civil war which she had to fight with Don Carlos. So, she had to accept a constitution drawn up in 1837. Under this, there was set up a Senate consisting of members nominated by the crown for life and an Assembly elected for three years by the people. But, the working of the constitution was not satisfactory. Isabella II practically exercised despotism. The constitution was revised in a less liberal direction in 1845 being nearer the French Charter of 1830. In 1869, a revolt forced the queen to abdicate. A new *Cortes* drew up a constitution. This contained a bill of rights. A Senate, elected by the people through electoral colleges, and an Assembly, elected by manhood suffrage, formed the legislature. In 1873, this constitution collapsed and a republic followed. This First Republic was really weak, because it was opposed by the monarchists and the church. The republicans were divided into factions controlled by leaders who were mutually jealous. Some of them were led away by theories. No foreign state recognized the Republic. The masses of the people, who were unaccustomed to self-government, gave little support to the Republic. Hence, the Republic collapsed. In 1874, monarchy was restored under Alfonso XII. A new constitution, based on the constitution of 1845, was drawn up in 1876. It showed also the influence of the liberal principles of the constitution of 1869. It was comprehensive in its scope.

Dodd in his *Modern Constitutions* shows that the bill of rights was very elaborate ; but, this was often violated by the government, because of the power of suspension of rights given to the government. As in Italy, no special provision was made for constitutional amendments. The rules of succession for the monarchy and for the regency were laid down in the constitution.

The legislature, called *Cortes*, consisted of two chambers—the Senate and the Chamber of Deputies. In the composition of the Senate, all kinds of principles were combined. Certain senators sat for life by prescriptive right. Certain others were nominated for life by the crown. Some others were elected for ten years by the provinces, the universities, the church, the Royal Academy and the highest tax-payers. Half of these were renewed every five years.

The Chamber of Deputies was, according to a law of 1907, elected by all male citizens of twenty-five who resided in the electoral districts for not less than two years. Voting was compulsory and the members held office for a term of five years. The ministry was responsible to the legislature.

If a bill was rejected by either chamber or by the crown, it should not be reintroduced during the session. The budget must be presented to the lower house in the first instance. The Chamber of Deputies could impeach ministers before the Senate.

The two houses forming the *Cortes* elected the regent. As the representative of the sovereign nation, it received from the king the oath of fidelity to the constitution and the laws. The members were paid and the sessions were generally public.

The political parties were not national in organization and were essentially followers of political leaders. The conservatives generally supported the government and the liberals wanted the civil rights to be safeguarded by the courts. But, as in Italy, the parties had no vitality except the Socialists who were more organized. As in France and Italy, the presence of many unstable groups in the legislature made the cabinets coalitions of heterogeneous groups which had no solid programme or permanent tenure of office.

The Supreme Court at Madrid, modelled on the French Court of Cassation, decided questions coming on appeal from the lower courts on points of law and cases involving administrative law. Trial by jury was introduced in criminal justice in 1888.

The country was divided into forty-seven provinces, each ruled by a governor and a provincial council. The smallest unit of local government was the Commune which had its own government. But the central government was always encroaching on the sphere of local government.

Parliamentary government was dis redited by the struggle of parties. The two most imp >rtant parties, the Conservatives and the Liberals, had really no principles and were divided into numerous groups. The clergy and the landlords still possessed enormous power. The masses of the people were illiterate and unaccustomed to democracy. Elections were farcical. A small group of republicans gave trouble. King Alfonso XIII (1886-1931) was unfit to solve the problems of Spain. There were also disturbances in Catalonia where the people wanted autonomy. There was ministerial instability and frequent military revolts, as the powerful army interfered in politics. Finally, in 192 :, a military leader, General Primo de Rivera seized power. The constitution of 1876 was superseded. A directory of military generals was set up headed by Rivera. By his decrees, he abolished the *Cortes* and suspended all civil liberties. The town councils were dis olved and the press placed under censorship. Many administrative reforms were carried out. As in Fascist Italy, there was efficient government; but civil liberty was destroyed and all opponents expelled. In 1925, a cabinet of civilians, still led by Rivera, replaced the military dictatorship. In 1927, an assembly elected by professional associations was set up. But it had only advisory powers. Owing to popular hostility, Rivera resigned in 1930. The industrial workers had become republican and in the municipal elections the republicans and the Socialists swept the polls. The king concluded that he had lost the love of the people and abdicated in 1931. Spain became now a republic.

The constitution of 1931[1] provided for this Second Republic. The President was elected by an electoral college chosen by the people and the deputies. The President ruled with ministers responsible to a parliament of one house. Under certain circumstances, the President could dissolve the *Cortes* and the *Cortes* also could dismiss the President. Referendum could be demanded by a petition from 15% of the voters who could also initiate constitutional amendments in this way. The constitution was unique in that the policy of war was definitely abandoned. The door was opened for provincial autonomy. Thus, a separate government was given to Catalonia, while some matters concerning the whole country were reserved. The old privileges of the nobles were abolished, and women were given equality. The church in Spain has been powerful and free from all government control and taxation. Its revenues were equal to those of the state. There were also powerful Jesuit orders. In Spain, other religions were allowed only under restrictions. The church controlled secondary education and their clergy had special privileges. Tribute was paid to the Pope. The new constitution separated the church and the state and established religious toleration. The Jesuit order was dissolved. The church was disestablished and the property of the religious orders was confiscated. Civil marriage and divorce was legalised. There were also provisions in the constitution tending to Socialism and nationalisation of public utilities. The Government took advantage of these provisions to bring the railways and the Bank of Spain under state control.

The peasants were helped by expropriation of land with compensation to former landlords. The state intervened in labour disputes, and provided for minimum wages. Mixed juries made up of representatives of workers and employers decided labour disputes. Unemployment was met by large-scale public works. Education was promoted and the army reorganized. The Republican leader, Azana, who carried out these important changes as Prime Minister fell from power in 1933, as the elections returned a majority opposed to the Left. This was largely due to the opposition of the army, the nobles, the church and the Communists. In 1936, the Leftists were returned to power again and Azana again became Prime Minister. But, the republic met with troubles. The army, the nobles, and the church intrigued against it. Trouble broke out also in Catalonia. Industrial development of this region had created a proletariat whose practical grievances were increased by regional feelings. A similar feeling developed in the Basque provinces. The government had to provide a statute of autonomy for these Basque areas also. These assumed the name of Navarre with the capital at Pamplona. In 1936, the anti-republican group broke out into revolt under General Franco and a civil war began. The European Powers contented themselves with non-intervention. Finally, in 1939, Franco overthrew the republicans and controlled the government.

[1]Greeves (*The Spanish Constitution*) describes the republic as a Pluralist State with features of Socialism and Internationalism.

The dictatorship under General Franco was just like that of the dictatorship in Germany and in Italy. The Spanish Fascists were called Falangists, "Falange" being the Spanish name for "party". Franco was its *Caudillo* or leader. The press was controlled and enemies put in concentration camps. The economy of the state was reorganized on the principle of autarchy. A strong military force was maintained with the idea of making Spain a European power. In the budget of 1949, 55% of the revenue was spent on the defence services and the police.

In 1948, Spain was once again declared a monarchy without a king. Since the royal claimant, Don Juan, wanted unconditional grant of powers, a king was not proclaimed. It was declared that Franco would be the head of the state, helped by a regency council. The Head of the State is given power to propose his successor. In the event of this death or incapacity, the regency council will fill up the post, and the person may be a member of royal blood.

In 1939, twenty-five corporations were formed composed of employers, workers and distributors. Representatives of these national corporations in the provinces formed provincial corporations under the governor of the province. A part of the *Cortes* is chosen by these vocational corporations. The rest are nominated. Trade unions, local bodies and universities are represented. But, as the Falange is the only party allowed in the state for elections, the chamber consists of only Falangists. It is only an advisory body. All laws need the approval of the Head of the State. There is no bill of rights. A penal code punishes offences against the state.

In 1948, local councils were restored ; but they should be composed of members elected by heads of families and syndicates representing employers and workers.

Spain is divided into provinces, each with its assembly made up of association of municipalities. A government officer decides the organization of these municipalities and presides over the provincial assembly. The mayors and councillors are appointed by the government.

Instead of carrying out land reforms, tax reforms and irrigation projects which are essential, Franco has stood only for the vested interests. Education is again controlled by the church and confiscated property of religious orders has been returned Franco got from the Pope the right to nominate the bishops.

Spain once had a great empire which included Central and South America. The Spanish colonies were governed directly from the mother country by means of a centralised system of officials. Laws were made with little knowledge of local conditions. Elaborate regulations hampered trade and industry. The rigid monopoly on trade encouraged smuggling. The colonies were impoverished and the original colonists degenerated. Corruption flourished in the government. The internal decline of Spain and the naval domination

of Holland and England weakened the control of Spain. The Spanish colonial empire became diminished by the conquest of some of her colonies by other Powers and by the revolt and independence of others. The final blow was the war with U S.A. The Spanish oversea empire dwindled into a few areas, the most important of which were the Riff Coast of Morocco (a small region of Morocco) and the Canary Islands. During World War II, Spain, disregarding the International Convention of 1923, seized the International Zone of Tangier. She had to withdraw from it in 1945, and the zone is once again governed by eight Powers including France and Spain. Gibraltar, in the south of Spain, is a British Colony. Ruled by a governor alone till 1922, it was given a council that year. Spanish nationalism wants to recover it. Gibraltar commands the entrance to the Mediterranean.

Spain is strategically important. She has great mineral resources like copper, iron and mercury. Her mountains provide good air bases and her estuaries good naval bases. Franco has skilfully played on these factors in the "cold war" between Russia and the Powers opposed to her, so as to get American help.

PORTUGAL

The government of Portugal at the beginning of the 19th century was despotism. Pedro IV issued a charter in 1826 which set up a parliamentary system of government on the English model, but only disorder followed. Four-fifths of the people were illiterate and unaccustomed to democracy. In the absence of healthy public opinion, cliques and factions flourished. Party politics came to be only a struggle of factions, and ministries were unstable. Between 1906 and 1908, the king and the army set up a benevolent dictatorship. But the educated classes became republican. In 1910, the republicans expelled King Manoel and set up a republic. The revolution was bloodless. A new constitution of 1911 repealed all restrictions on civil liberty like control of the press. The legal connection between the church and the state was broken and religious orders were expelled. Many administrative reforms were carried out.

The head of the state was the President chosen by a two-thirds majority of a joint session of the legislature. He held office for four years. The ministry was responsible to parliament. The ministers were members of the legislature and one of them was the Prime Minister. Ministers should be tried in the ordinary courts for all acts tending to subvert the constitution, the independence of the country, internal peace or the civil rights of the individual.

The upper house or the Council of Municipalities was elected for six years by the municipal councillors, half retiring every three years. The lower house or the National Council was elected for three years by all male citizens of twenty-one. Financial measures, bills dealing with the army and the navy, constitutional revision, and the bringing of actions against the executive had to be initiated in the lower house.

Deadlocks were solved by joint sessions. The President had no power to veto the laws passed by the legislature. Members of both chambers were paid.

Parliamentary government did not work well. The Royalists kept up intrigues. The workers, infected by Socialism, indulged in strikes. The government lacked sufficient financial resources. The electorate had no experience in democracy. There was a great multiplicity of factions. Politicians fought for power, impelled by self-interest. Political history was simply a record of short-lived ministries and revolutionary outbreaks. From time to time even the parliament was dissolved for long periods by the executive.

After the World War I, a group of army officers turned against the discredited parliamentary government. In 1921, they set up a dictatorship based on censorship of the press and the repression of opposition. In 1928, the army leaders called in Dr. Salazar, Professor of Economics in Coimbra University, to help them, as the country was verging on bankruptcy.

Salazar took office as Finance Minister and then became Prime Minister. He stabilised the finances of the country. He became the chief controller of the government and set up a dictatorship. He introduced a new constitution in 1935, with the co-operation of vested interests, like the army and the church. A nominal president of the republic continues and is elected for seven years. But the government is in the hands of a Council of State headed by the Prime Minister. The legislature has been reorganized on the basis of corporations, and consists of a single chamber. Educated heads of families are electors for local Parish Councils. These elect municipal councils and these elect county councils. All the councillors of the parish, the municipality and the county councils form the electorate for the National Assembly. This electorate is only one-tenth of the population. The Assembly sits only for three months in the year and cannot overthrow the cabinet. Its functions are purely advisory.

As in all totalitarian countries, only a single party was allowed till recently and this is the party of Salazar called *Unito Nacional party* (the party of National Union). Like the Italian Fascists who wore black shirts and the German Nazis who wore brown shirts, this party wears green shirts. Salazar calls his government an "organic democracy" ; but, really it means the government of a small number of bankers and landlords. The church strongly supports the administration as also the army. As in all dictatorships, there is an organized youth movement (led here on Catholic lines) which upholds the dictator. Occupations are governed by corporations which, like the mediaeval guilds, look after the interests of those engaged in the occupation.

The constitution is outwardly democratic and there is less militarism than in the other dictatorships.[1] The Portuguese people accepted the government because they wanted a government which would restore order. There was progress on all sides. The corporations, unlike those of Italy, enjoyed some autonomy. In 1945, political parties were allowed to function, provided their programmes remain within the framework of the new state. In 1950, the law forbidding the return of the old royal family to Portugal was repealed. But, individual liberties are still controlled and censorship of the press is maintained. In 1949, a decree set up a Council of Public Security to suppress activities against the security of the state.

Portugal still has a large colonial empire the main part of it is concentrated in the great African provinces of Angola and Mozambique. The Portuguese overseas possessions are the Cape Verde islands, Portuguese Guinea, the S. Tome and Principe islands (off the Guinea coast), Angola (Portuguese West Africa), Mozambique (Portuguese East Africa), Portuguese India, Macao (in China) and Portuguese Timor (Malay Archipelago). In all they have more than ten million inhabitants. The empire is governed by officials responsible to Salazar. The old liberal policy has been abandoned and administration centralised under Portugal. A law has changed the name "colony" into "oversea provinces".

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1 Salazar did not win his way to power by courting popular favour and got his constitution approved by plebiscite. His aim was to make Portugal a "collective middle state", non-party, co-operative and reconciling private property with social welfare. Unlike other dictators, he hated pomp and parade. He accepted the anti-capitalistic and anti-socialistic ideas of the Catholic Church.

CHAPTER V

GERMANY

OWING to the series of terrible wars, German population even in 1800 was not greater than in 1600. Compared with France, towns were not many. Unlike England and France, Germany was purely agricultural. Eastern Germany (conquered from the Poles and the Slavs) was the granary of Germany and was under feudal conditions under big landowners called *Junkers* who, unlike the French *seigneurs*, actually lived in the locality. Like the English squires, the *Junkers* built up large farms ; but these were cultivated by the servile Slav population. The emancipation of the peasantry here was, therefore, a prolonged process, and the initiative had to be taken by the state, and not by the serfs themselves. In the region west of the Elbe, feudal conditions continued till serfdom disappeared in the 18th century, and, as in France, small peasants developed. Under the influence of the French example, the king of Prussia abolished serfdom in 1807. But, it may be noted that even before the French Revolution, many German princes had tried to improve the lot of peasants. In Wurtemberg, the peasants were substantially free. By 1830, serfdom disappeared in south Germany also. In Bavaria, the serfs became free by about 1850. In 1849, private manorial courts were abolished in Prussia and, in 1877, in the whole empire. The peasants were not allowed to take up industry in the towns till a law of Stein (1806) allowed anyone to take up any occupation he liked. But the *Junkers* still retained their economic dominance till 1870 when only the slow process of emancipation was completed. But this emancipation was accompanied by diminishing the land of the serfs for giving compensation to the lords.

By the opening of the 19th century, German towns were still medieval and some of them were ruined in the past troubles. Big towns like Berlin were few.[1] Industry was hampered by the restrictions of the guilds, bad roads, tariff barriers, variety of coinage and variety of weights and measures. The mass of the people were poor. The one great aim of the rulers of Prussia was to develop its economic progress. Immigrants were attracted to set up new industries which were protected by tariffs. The tradition of autocratic rule left all initiative to the state. As early as 1808, Prussia reorganized her educational system, and there developed an educated class here much in advance of England. Till 1850 German industry was not important. France and Belgium were much superior. Even Switzerland had superior manufactures. But Napoleon had introduced uniform tariffs in all the areas he had conquered, and this influenced Germany. Prussia in 1818 abolished all internal tariffs and then began

[1] Dr. Clapham remarks that the best test of a country's industrialisation is the size and growth of the towns.

to negotiate tariff agreements with other states. By 1833, a tariff union called *Zollverein* included eighteen states like Prussia, Bavaria, Saxony, Wurtemberg, the Thuringian states etc. An annual congress of the delegates of these states decided fiscal policy by unanimous vote. In 1842, some other states like Baden and Brunswick joined. Luxemburg, though not part of Germany, joined it. In 1851, Hanover and Oldenburg joined. Prussia, anxious to become the head of Germany in place of Austria, cleverly kept Austria out. By 1867, all German states were included except Hamburg and Bremen which joined only in 1888. Thus, economic unity was promoted .[1] This and the growth of railways helped the growth of industries. The state also encouraged technical education and research. The Germans also were efficient and disciplined. Late emancipation from feudalism had habituated them to work together as they had done in the common cultivation of the manor. Thus, up to 1870, Germany was re-organising under Prussian leadership.

We, now, turn to survey how this Prussian leadership spread in Germany in the political field.

Napoleon suppressed the petty principalities and the Holy Roman Empire ended. After the fall of Napoleon, Germany became a confederation with the emperor of Austria as president. As in the case of the United States, at first there was no effective machinery for carrying out the decisions of the confederation. The various rulers treated them as mere recommendations. There were thirty-nine states differing in size and strength. After the defeat of Austria by Prussia, Prussia created a league of North German states under her presidency called the North German confederation. It included twenty-one states including states like Saxony, Brunswick etc., and the three free cities of Hamburg, Bremen and Lubeck. The constitution of the confederation was original. There was a federal council called the Bundesrath consisting of delegates from the different states and controlling administration and the initiation of laws. The lower house called the Reichstag was elected by manhood suffrage. It had no right to control the executive, though it controlled finance and passed the laws. The Prussian king was the head of the confederation and was helped by a chancellor who had a power greater than the English Prime Minister (compare the Grand Wazir of Turkey). The constitution of the later German Empire was only an expansion of this constitution by the admission of the four German states of the south—Bavaria, Wurtemberg, Baden and Hesse-Darmstadt, which remained outside at first. The confederation had, however, military and economic agreements with these states. In 1870, during the war with France, these states joined the confederation. In December of that year, the king of Bavaria proposed that the king of Prussia should become the German Emperor. This was accepted and the German Empire was set up on

[1]This counteracted the differences in character, religion, and history between North and South Germany.

the 18th of January 1871.[1] The constitution of the confederation was revised to suit the new development in April 1871 after the peace with France. The contributory causes of German unity were common language and literature, common traditions, tradition of old unity in the Holy Roman Empire, growth of nationalism and German recognition of the hopelessness of the old confederation of 1815. The growth of the power of Prussia led to exclusion of Austria which stood against German unity. German national enthusiasm created by the war with France in 1871 completed the unification. Germany, however, never became a unitary state, but only a federation, because there were differences of religion and, to some extent, of race and some differences also in traditions and, past history of the different states.

The constitution of 1871 was mainly framed by Bismarck on the basis of the constitution of the North German Confederation and the treaties between it and the South German states. The constitution included elaborate provisions concerning many matters like commerce, navigation, railways, defence etc., regarding which most constitutions make no mention. Bismarck desired to prepare Germany to be the strongest military state of Europe by these elaborate provisions. Unlike many European constitutions, there was no declaration of rights beyond a provision for common citizenship. The only democratic principles included were election of the parliament by manhood suffrage and the control of taxation by this parliament. The empire was a federation of twenty-five states including kingdoms, grand duchies, duchies, principalities, and free cities. The following differences from the United States may be noted: (1) While the United States could start on a clean slate, here the empire had to build on the basis of past historical conditions. Hence we find inequalities in size, population, and power amongst the states of the German Empire. The empire was really dominated by Prussia. (2) Unlike the United States, the federation had more extensive legislative power. Thus it could pass laws regarding matters like canals, roads, coinage etc. Some matters like education were left to the states. Between the matters left to the states and to the federation, there lay an extensive area in which the two shared power. But, even here, there was a tendency to reduce the jurisdiction of the states. But, unlike the United States, the administrative services of the federation were not big. There was no federal administrative system as such except in the fields of foreign policy, defence, posts and telegraphs. The federal government depended upon the state officials for carrying out many of its measures. The federation simply supervised the execution of these measures. In general, the Imperial government controlled also banking and commerce and civil and criminal law. In 1873, a new imperial currency based on the *Mark* replaced the old currencies of the different states. (3) Unlike the United States, the

[1]Dawson remarks (*Evolution of Modern Germany*) that the war with France, the indemnity and the new empire gave impetus to material progress.

constitution did not embody popular sovereignty. The popular house had no power to direct the policy of the government.

The German Empire was not truly federal, as Strong points out in his *Modern Political Constitutions*, because one state, Prussia, was preponderant. Lowell remarks : "The Empire is a federal government of a peculiar type in which legislative centralisation is combined with administrative decentralisation and it was an association of privileged members so contrived that Prussia has the general management subject to a limited restraint by her associates." Prussia formed nearly two-thirds of the empire and had nearly two-thirds of the population. Hence, she was bound to dominate the federation. Her king was the perpetual emperor. Prussia controlled seventeen votes in the Bundesrath and could prevent any change she disliked, because constitutional changes could be defeated, if opposed by fourteen votes in the Bundesrath. The Reichstag could be dissolved by the emperor with the consent of the Bundesrath. Even in ordinary legislation, the smaller states followed the lead of Prussia.

The emperor nominated the chancellor who was always a Prussian up to World War I. The Prussian *Junkers* monopolised the army, the navy and the civil services. As a result of private agreements Prussia got the right to recruit, train and supply officers to the armies of twenty-one of these states, and treat them as if they were part of the Prussian army. Only a few states like Bavaria, Baden and Wurtemberg were left any important privileges. In case of war, even the armies of these states passed under imperial control. The emperor was the commander-in-chief of all the imperial forces. In the eyes of the law, the federation was permanent, and a state which refused to be bound by its authority might be coerced by the federal force (execution). Thus, even though the empire made Germany a great power, the constitution meant only the dominance of Prussia. Federal in form, it was really the rule of Prussia. Lowell remarks : "It is hardly too much to say that Prussia rules Germany with the advice and assistance of the other states. The empire is only a continuation of the old confederation in a modified form." The king of Prussia was said to be "the personified power of the state." The emperor was not given by the constitution any important power except in defence and foreign policy where he had absolute control. His great power was due to his position as the king of Prussia.

The Bundesrath has been considered as a peculiar mixture of four different bodies—an executive council, a house of the legislature, a court and a congress of envoys. In the latter capacity, it could not be equated with an international assembly of diplomats, because it was a part of the German constitutional system and possessed legislative power in that system. On the other hand, it was not a legislature in the ordinary sense, because the members were delegates who voted according to instructions from their states and any of them could be recalled by the state at any time. So, the members

had no fixed term of office and could not vote as they liked. Lowell would regard it as an assembly of the rulers of the different states who appeared in it by proxy. At the same time, as a federal legislature, it represented the states according to their size and importance.[1] Prussia commanded seventeen seats. In 1911, when a constitution was given to Alsace-Lorraine, that region was given three delegates in this body. Since Prussia controlled this area, these votes really increased the voting power of Prussia. Though it was the upper house of the legislature, partly by law and partly by custom, all legislation, including finance, originated in the Bundesrath. It also had extensive administrative power covering the whole field of government. Any constitutional amendment could be voted by fourteen votes in the Bundesrath.

As a court, it had jurisdiction over the states and heard the complaints of one state against another. Its meetings were private, and it worked largely through committees. The chancellor presided over the body as the representative of Prussia. German writers differed as to the location of sovereignty in the German Federation. Many writers believed that this was located in the Bundesrath, though Burgess differed from this view. Really, the Bundesrath could not be regarded as an independent organization. It was only the instrument by means of which Prussia governed the empire. The Prussian delegation controlled the initiative of all measures in it and saw to the rejection of anything displeasing to Prussia.

The Reichstag was elected for five years by the vote of all males over twenty-five. But the electoral districts were not altered after 1871 to accord with changes in population, and, so, many important cities had no adequate representation. Its actual powers were limited. Its powers to control taxation were ineffective, because it had to act with the Bundesrath with regard to the grant of existing taxes. Further, many of the chief taxes were permanent. Money bills originated in the Bundesrath. Again, all legislation originated in the Bundesrath and, with its consent, the emperor could dissolve an unpleasant Reichstag. There was no ministerial responsibility, as the chancellor was not amenable to its control. Further, the Reichstag was divided into factions which could be played off against each other by the government. This policy was begun by Bismarck and followed by his successors. The stern control of the press by the government also discouraged criticism.

The parties in the Reichstag, though many, were however too small and short-lived. They could not be called national either in their ramifications or programme. The most important group was the reactionary group consisting of the military, bureaucratic and financial

[1] Prussia had seventeen votes; Bavaria, six; Saxony and Wurtemberg, four each; Baden and Hesse, three each; Brunswick and Mecklenburg, two each and the other seventeen states, one each. Even if only one representative was present, he could cast all the votes of the state.

classes and the landlords. These strongly believed in militarism and absolute monarchy. They were helped by the government which used official pressure in the elections for the return of conservative candidates. In opposition to them there developed the Social Democratic party, originally influenced by Marx. It wanted to abolish all classes, and all kinds of exploitation of labour and set up an economic order in which the state would control all production and distribution. Ittended to be extreme and revolutionary, but, later on, many of the members diverged from the principles of Marx and became ready to co-operate with progressive groups of other classes. The party had support from the lower classes which were irritated by the reactionary policy of the government.

The German workers were more educated than elsewhere. Lassalle (1825-64), son of a Jewish merchant of Breslau, though a poor thinker, was good at agitation and, by 1860, he induced the German workers to form a political party. While he worked in the north, Liebknecht worked in the south. In 1869, the Social Democratic Party was founded with a Marxist programme. Universal suffrage enabled it to develop also in Reichstag. Bismarck had to enter on a long struggle with Socialism. In 1878, a severe law drove Socialism underground, but it spread. In 1881, the state allowed trade unions, but these were captured by the Socialists. Thus, as in France, trade unionism grew up under repression and hence tended to be revolutionary. Contrast England. But, as in France, trade unionists became divided in course of time into Reformist and Revolutionary sections. In 1881, a Socialist Party Congress at Erfurt, while adhering to Marxism, concentrated on practical reforms. Thus, in practice, it tended to be constitutional and national in spirit. In 1912, the Socialist Party became the strongest group in the Reichstag.

Bismarck, in order to outbeat the Socialists, began State Socialism himself. He was also influenced by a group of economists who were against *laissez faire*. He first tried to protect the handicraftsmen against modern capitalism. A series of laws from 1878 reorganized the guilds which had survived in Germany. But these guilds never included a large part of labour. They were powerless to tackle modern problems, and the benefits they gave during illness and poverty were scanty. Bismarck felt that these benefits could be best promoted by state action. In 1883, sickness insurance was introduced. Prussia had already made employers liable for accidents. Bismarck's law of 1884 provided insurance against industrial accidents throughout the empire. In 1888 followed insurance against permanent incapacity for work owing to ill-health and old age. In all these cases, both the worker and the employer contributed to a fund, except with regard to accident insurance where the employer alone shouldered the burden and old age insurance[1], to which the state also

[1] In old age insurance, annual pensions were provided to persons over seventy.

contributed. After Bismarck, the scope of insurance was extended to domestic service, agriculture and the professions. Thus, Germany became the pioneer in insurance against sickness, accident and old age. But unemployment insurance (to which the employers and the workers contributed) was introduced here only in 1927. Prussia had been the first state to reform the old system of poor relief which had been till now only the concern of the locality. The German empire adopted the reform introduced by Prussia, according to which the states supervised poor relief through local authorities. Before Bismarck, the attempts of Prussia to redress the ills of the factory system were not much successful owing to the opposition of employers. Bismarck also never took much interest in this, though he was forced by the Reichstag to pass the law of 1878 providing for factory inspection. Bismarck did not enforce this law. After him, a Factory Law of 1891 limited the working hours of women and children. But, even now, factory inspection was not satisfactory. Working hours for men varied from place to place.

Bismarck continued the old Prussian tradition of paternalism to promote material prosperity of the people. But the "State Socialism" set up by Bismarck failed to check the growth of the Social Democrats, just as his repressive policy also failed.

The question of the rights of the Catholic Church led to the growth of separate parties in the Central and state legislatures. Bismarck had tried to assert the supremacy of the state over the Catholic Church. This led the Catholics to form political parties, and Bismarck had to give up his policy to get their support against the Socialists.

Later, Bismarck's belief in the omnipotence of the state was carried to excess by his successors. The German idea of "Kultur" was systematically propagated by the state to stimulate pride in, and loyalty to the state in schools and colleges. Like military service, education became thus directed by the state. Writers like Treitschke and Von Bernhardi idealised war. "Might is the supreme right..... and war gives a biologically just decision." War was held to promote unity and to keep population within the means of subsistence. The German militarists failed to note that the so called good results of war could be secured in other better ways. They failed to note that only common interests can lead to permanent unity and that modern war reduces means of subsistence even more than population. Human morality rightly abhors war as primitive.

Party system did not develop very much owing to government repression. The parties, in general, were not divided on national issues as in Britain or local issues as in Italy. They tended to be irresponsible as the opposition party could never take up the government. Parties also were largely based on class distinctions. The system of ballotage as in France favoured multiplicity of parties.

There was no system of federal courts and the judges were all appointed by the states. Imperial law simply fixed the qualifications for the judges. A supreme court of appeal was set up in 1897 at Leipzig to secure uniform interpretation of Imperial legislation. There were also administrative courts as in France. German writers discussed the question whether a court could consider the constitutionality of a statute. Many writers held that the promulgation of the laws by the emperor decided the validity of the law. As a matter of fact, the courts had never questioned the constitutionality of a statute.

Each German state had its own government, though subject to the superior authority of the emperor in various matters. The most important of the states, Prussia, had a constitution modelled on the old constitution of Belgium. But it remained ineffective just like the ukase of Tsar Alexander II liberating the serfs of Russia. Thus there was a declaration of rights, but there was no machinery to safeguard it. The constitution provided for ministerial responsibility; but, here also, there was no method to enforce it. The ministers were controlled by the king and the policy of one minister might differ from that of another. Thus the crown was supreme. There was a Prussian legislature. The electoral system was the oldest and most undemocratic in the whole of Europe.[1] It was really dominated by the landlords. The other states also kept to the principle of autocracy except in Baden, where there was some progress in constitutional government. But everywhere there was no ministerial responsibility. Local government and judiciary in all the states were mostly modelled on Prussia.

The civil service was admirably organized. The need of passing examinations for obtaining several posts led to efficiency and avoided jobbery. This led to the growth of a strong bureaucracy professionally organized. German economic development was mainly due to state direction, as we shall see now.

State control of economic affairs had advanced very much in Germany before the War. Germany always had a number of navigable rivers. By the end of the 18th century, Prussia had built a network of waterways. The Zollverein got rid of river tolls which hampered trade. Before 1870, most of the German rivers had been linked by canals. Some of them like the Kaiser Wilhelm Canal (Kiel canal), which did much to revive the trade of old Baltic towns like Lubeck, were strategic. Roads were at first bad, because political disturbances in the 17th and 18th centuries hampered development. Contrast France. A network of good roads was built only after 1870. But Germany was ahead of all Europe, except Belgium, in railway

[1] The suffrage for the lower house (*landtag*) was on a three-class basis, based on the amount of taxes paid. In each district, each class chose a college of electors which chose members. Thus the richer classes got preponderant representation. The same system prevailed in some other states like Saxony.

construction. List, the German economist, did much propaganda for railway and, in 1835, the first railway was built in Bavaria. Unlike the planned railway system of France, here there was no system till Prussia took the lead. Prussia, from the beginning, was supervising her railway companies to avoid wasteful competition. As in U.S.A., the German railway construction was rapid and cheap. Unlike England, the configuration of the German plain lessened physical barriers, and state control checked haphazard construction. While France owned only some railways and subsidized the rest, here railways were owned and operated by the various states in due course. When the empire was set up, there was at first confusion. Some lines belonged to the empire and some to the states, while some were private. Each railway had its own tariff. Bismarck wanted all states to hand over their lines to the centre. But they refused. Still, Prussia controlled all the northern lines. Only Bavaria, Wurtemberg, Saxony and Baden had separate state railways. Most of the private lines were purchased by either the centre or the states. Tariffs also were made uniform by the Railway Office, set up in 1873 and controlled by the centre. As in France, military considerations induced the building of many lines. By 1875, all essential lines were completed, helped partly by the indemnity paid by France after the Franco-German War. The railways completed the economic unity of Germany begun by the Zollverein. Like tariffs, railways were used by the state to help its economic policy.[1]

It was from 1870 also that a mercantile marine developed. Hamburg and Bremen gave up in 1885 the fiscal autonomy guaranteed to them when they joined the empire in 1871. They developed into important ports. By 1910, German shipping, helped by state subsidies, was thrice that of France. As in France, the telegraph system was, from the first, a state monopoly. Contrast England where the state took it over only in 1869. By 1875, the telegraph systems of the various states were combined under the centre. In telephone, Germany led the way in Europe. Unlike England, where the Stock and Produce Exchanges were private associations, in Germany, as in the rest of Europe, they were regulated by the state.

When the German Empire was set up, Germany was, on the whole, a land of free peasants; but the big land-owners of East Prussia continued to exercise influence on politics. Obedience of agricultural labourers to the landlords was enforced by a law of 1810. This induced Prussian labourers to migrate to towns and the landlords had to import Polish labour. Prussian laws of 1890 and 1907 tried to acquire big estates and cut them out into small holdings. But these laws were not much successful. Even as regards taxation, only in 1861 was Prussia able to readjust the taxes so as to make the landowner pay his proper share. It was only after World War I that the Weimar Constitution of the German Republic contemplated expropriation of big estates and break-up of large

[1]See Knowles, *Economic Development of Europe*, Part IV, Ch. 2.

farms. But, even now, unlike states like Rumania, Bulgaria and the Baltic States, very little expropriation had actually taken place.

But the state encouraged agricultural progress even in the 19th century. Liebig (1803-73) laid the foundation for chemical study of soils and the use of chemical fertilisers, which was developed in universities and schools. This kind of research, a protective tariff and development of co-operation led to agricultural progress. Bismarck began agricultural protection, as cheap corn invaded Germany from Russia, Rumania and U.S.A. Raiffeisen (1818-80), an ex-soldier of Prussian Rhineland, pioneered co-operative rural banking to help poor cultivators. Schulze-Delitzsch began such banks in towns, though his customers included cultivators also. As in France, the state subsidised and encouraged co-operation. Let by Prussia, consolidation of holdings had been promoted by law. By the later 19th century, the German farmer had become the best expert in agriculture in the whole of Europe. But Germany still continued to depend on food from outside for at least a sixth of her people.

Silver was the standard coin in all German states, though gold coinage also prevailed. Each state had its own currency. A uniform currency came only with the empire. Germany used the indemnity got from France to set up a gold currency and dropped coinage in silver. The earliest bank, the Royal Bank of Berlin, was set up by Frederick the Great in 1765 as a purely official body. The Prussian Bank began as a private organization in 1847, though controlled by the state. Gradually, numerous banks arose in the different states. It was only in 1875 that the Reich Bank was set up as a bank for the whole empire. Unlike France and England, banking was closely allied with industry.[1] Thus, the Dresdner Bank (set up in 1872) was closely connected with the Krupp interests. Banks also formed combinations.

Germany, though still an agricultural country, became in the 19th century the second great industrial country of Europe.[2] This great progress was due to the simultaneous operation of a number of forces—railways and canals, abolition of medieval economic restrictions, national unity, a banking system which helped commerce and industry, attention to technical education, self-confidence and state help. Germany also had extensive coal-fields in the Ruhr (the heart of the Rhenish industrial area), Silesia and the Saar basin. Germany also acquired the iron fields of Lorraine in the Franco-German War. Before that, in 1850, "German production of iron was less than half of that of France, and only a sixth of that of Britain." But, by 1910, Germany came next to the U.S.A. in iron production. Keynes remarks (*Economic Consequences of the Peace*) that the German

[1] See Marshall, *Industry and Trade*. See also *Calcutta Review*, Feb. 1936, for capitalist associations.

[2] In 1849, the urban population was only 28%. In 1875, it was 39%. In 1925, of the population of sixty-three millions, 64% had become urban.

Empire was built more truly on coal and iron than on blood and iron. Fiscal policy till 1873 was on the side of free trade. But List even in 1841 in his *National System of Political Economy* advocated protection for backward industries. Bismarck also wanted to get the support of the industrial and agricultural classes who wanted protection. The revenues of the empire which chiefly depended on customs could also be increased. It was an age of protection. Austria and Russia had raised their duties. The McKinley Tariff of 1890 in U.S.A. and the Méline Tariff of France of 1892 were protectionist. In England, also, there was a movement for protection combined with imperial preference. Germany developed a composite tariff system which, as in France, imposed lower duties on nations who enjoyed "the most favoured nation treatment" under treaty and higher duties on others. A change took place in German character. In the 18th century, the Germans were famous as poets, musicians and philosophers. Now, they were interested only in material advancement and applied their great capacity to business. Science was applied to industry. Huge companies, helped by the state, developed. The first *Kartells* appeared in the 'sixties of the last century. Prussia enacted a company law based on the French *Code de Commerce* in 1843. Later on, imperial laws laid down general regulations for the companies. By 1900, all industries were under *Kartell.* Banks helped their growth and the people welcomed them as a symbol of German achievement. Some of these became international in scope like *Allgemeine Elektrizitäts-Gesselschaft* which was founded in 1883. State help was at the back of industry. Contrast the *laissez-faire* policy of England.

After 1870, German birth-rate increased. Unlike France whose population was almost stationary in number and which also was self-sufficient in food and had the advantage also of a large colonial empire, Germany had an unfavourable soil and a prolific population. In 1816, the population was only twenty-five millions. In 1849, it had become thirty-five millions and in 1890, forty-nine millions. Hence, Germany had to find an outlet in emigration, and there was emigration to U.S A. in large numbers during the 19th century. Bismarck was also forced by public opinion to join the scramble for colonies. As in France, imperialists wanted the prestige of an empire. German business wanted new markets. But German imperialism was based much more on preconceived plan than the British. Here "trade reluctantly followed the Flag". Emigrants to the colonies were few, as they were unhealthy. Wars with the natives were costly and the colonies were financially a drag on Germany. German imperialism also tried to dominate the Balkans and extend to Asia Minor.

Even before World War I, the government, though strong in appearance, was really weak. The democratic forces took advantage of war weariness. The military groups lost their prestige owing to German defeats. The influence of the Russian Revolution was contagious. Taxation had to be increased and covered income

and property. It was not enough, and the government resorted to loans. This dislocated public finance by the end of the war.

Just before Germany collapsed in World War I, the Kaiser promulgated a law of electoral reform for the Reichstag and promised one for Prussia. But President Wilson of U.S.A., wanted establishment of democratic government before peace negotiations could start. The Kaiser allowed a constitutional amendment setting up ministerial responsibility. But the Social Democratic party (which, at first, supported the war) demanded the Kaiser's abdication and a republic. That party was influential, as its programme even before was so moderate that even non-Socialists who hated the old despotism supported it. The Kaiser abdicated and the chancellor, Prince Max of Baden, announced the abdication and handed over power to a provisional government headed by the Socialist leader, Ebert. This government carried out the revolution in Germany in a bloodless manner (1918 November).

According to the Treaty of Versailles which ended World War I, Alsace-Lorraine was ceded to France. The greater part of West Prussia and part of Eastern Silesia went to Poland. Part of Upper Silesia went to Czechoslovakia. The northern zone of Schleswig went to Denmark. Danzig became a Free City. This free city was placed under the protection of the League of Nations and had its own diet. A senate and president looked after the state's government. Germany lost her valuable coal-fields of the Saar and Upper Silesia. She also lost the iron fields of Lorraine. A constituent assembly was elected and met at Weimar to draw up a constitution, which lived from 1919 to 1933. The assembly was so formed that no party dominated it. Hence, the constitution was full of compromises. The constitution retained much of the organization of the old empire and, at the same time, it bore the impress of the peace treaties, and the current Socialist influence. The constitution which was mainly the work of moderate liberals was framed carefully and after great deliberation. It contained democratic schemes like the referendum and Socialist ideas like economic councils. Universally recognised rules of international law were as valid as federal laws. The constitution was very long and dealt with details like railways which are not found in other constitutions. There was a bill of rights mainly modelled on that of the United States. But it was more specific, because it established not only civil liberty but also economic rights. Special emphasis was placed on the correlation of rights and duties. In 19th century constitutions, the bill of rights would be only a catalogue of individual rights. But in this constitution the citizen also had to render social duties. For example, private property including land would be expropriated for public welfare, through a process of law and after paying a just compensation.[1] The use of land would be supervised by the state. The state owned waterways and railways. Thus these were transferred

[1]Private industry could also be taken over by the state after paying compensation.

to the state. The state would also specially protect the rights of labour. Illegitimate children had equal rights. Sex discrimination was forbidden. Public officials were given the right of association. The right of citizens to emigrate and secrecy of communication by letter, telephone or telegraph were guaranteed. Subject to the restrictions mentioned above, private property, inheritance and freedom of contract were safeguarded, as also the other usual constitutional rights. All titles and privileges due to birth and class were abolished. Brunet (*German Constitution*) says that the new constitution never specified to what extent these rights have legal force. If they are only moral maxims, they are illusory safeguards. The republican form of government was made compulsory for all the units of the new state and the old dynasties were abolished. The word "Reich" was retained, because it meant "Realm" as well as "Empire". The Reich consisted of eighteen "Lands". This number was reduced to seventeen by 1930. A number of old states like Thuringia, Hesse, Brunswick etc., became now merely administrative districts. The giant state of Prussia continued ; but it lost its old rights. The reserved rights of southern states like Bavaria were also abolished. The frontiers of the "lands" could be changed according to popular wish. Unlike the old empire, the government of the "lands" were subordinated to the federal government. So, like the old empire, the new republic can be called a federation only in a loose sense. When the constitution was being framed, those who favoured the destruction of all the states and the creation of a unitary Germany had no support, because they were identified with the influence of Russian Communism. This suspicion of foreign influence reacted on them, just as those who favoured a strong centre in Switzerland in 1802 were identified with the Jacobin influence of France and Hamilton of the United States in 1787 was associated with British influence. At the same time, under the risk of dissolution after the war, there was realised the need of a new centralised state which could avoid at the same time the domination of Prussia. Hence there was a compromise between those who favoured a unitary government and those who advocated the rights of states. Beard remarks that "the new German constitution attempts to combine the strength of Hamilton's government with the democratic control so vaunted by Jefferson". The federation was much more centralised than the old empire. The federal authority exclusively controlled many functions like foreign policy, defence, tariffs, coinage, citizenship, posts and telegraphs, railways, motor and canal transport etc. Unlike old Germany, communications were thus centralised. Further, the federation had concurrent jurisdiction in a number of areas like justice, civil and criminal law, the press, banking, fisheries, weights and measures, labour legislation, communications, poor relief, public health regulation of industries and commerce, physical and moral welfare of citizens etc. In these areas, a federal law would override a law of the unit. The federation had also normative powers *i.e.*, it laid down fundamental principles for the guidance of units like promotion of education, land laws, rights of religious associations, development of

housing etc. Detailed laws about these could be enacted by state legislatures.

As in pre-war Germany, the President could force a state to perform the duties imposed on it. The federation could also change the constitution of a state.

The federation was not dependent, as before, on customs and contributions from the states, but had its own share of taxes and complete freedom of taxation. Specially chosen federal commissioners directly supervised the administration of federal laws. It has been remarked that if the federation extended its authority to its fullest limits, the units might be reduced to the position of the French departments.

The head of the state was a President who should be outside politics and over the age of thirty-five. He was elected for seven years as in France, but, as in the United States, he was elected by the people.[1] He was eligible for re-election. He and his ministers could be impeached by the lower house of the legislature before the supreme federal court. On the initiative of the lower house by a two-thirds majority, he could be "recalled" by the people. Thus, for the first time in the history of any country, "recall" was applied to the head of the state. But this provision could not be abused, because if the people refused to recall the President, the President was automatically re-elected for a fresh term and the legislature was automatically dissolved. According to the constitution, the President was to be only a titular head and the real government was by a ministry responsible to the legislature. This ministry was headed by the Chancellor. Unlike the British Premier, he was not in charge of a department, but had only general supervision.

The constitution bestowed on the President the formal rights given to the head of the state. But the fact that the President was elected by the people made him more powerful than the President of France. This gave him a strength which a French president (elected by the legislature) could not dream of. Further, the French President could be forced to resign by the chamber ; the President here could submit the conflict between him and the legislature to the people for decision.

Much depended also on his personality and his long contact with public life. The President had the duty of selecting the ministers. In the early days of the republic, the President generally accepted the cabinet suggested by parties composing the majority in the legislature. But, gradually, the personal influence of the President increased under President Von Hindenburg who exercised more power than the English king. He made himself independent of the parties in the formation of cabinets. Thus, in 1928, he declared that

[1] Many, even when the constitution was framed, objected to this on the ground that it would open the way to the election of popular military leaders who could become dictators.

"he must decline, conformable with his constitutional rights, to allow any party to ditate to him in the matter of the composition of the cabinet." Thus, the President helped the formation of the cabinet under Von Papen which was composed of persons outside the legislature and bound by no tie of party. The reason for the development was the fact that the parties in the legislature had become split up into numerous groups and the internal political condition was becoming difficult.

The President was entitled to be informed concerning state business and to preside over the cabinet. But he did not have the right to vote at the meeting of the cabinet and, in fact, he was never present. Under article 25 of the constitution, he had the power of dissolving the legislature and could thus appeal from the legislature to the electorate. In the event of such a dissolution, the elections for the new legislatures took place within two months after the dissolution. This power of dissolution was exercised five times up to the year 1932. Article 48 of the constitution confers on the President extraordinary powers in the event of public order and security being seriously endangered. Thus, he could exercise dictatorial powers during emergencies under specified conditions. Between 1919 and 1924, the President issued 134 emergency decrees to suppress internal disorder. Similar decrees were issued at the time of the economic crisis of 1930. Article 48 gave the President also what was known as the right of "execution". This means that he could compel by force any German unit which refused obedience to a law of the Reich to carry out its constitutional obligations. The President was also the commander-in-chief of the defence force. Unlike the old constitution, his rights as commander-in-chief were not restricted by the rights of the states. The only weakness of the office was that the office of the President had no historical root and was, therefore, not supported by traditional reverence.

The legislatures consisted of two houses : (1) The Reichstrat and (2) the Reichstag. The Reichstrat replaced the old Bundesrath and represented the "lands". Each "land" had one member for every one million of the population. Thus, the house represented the peoples of the "lands" and not the "lands" as units themselves. But each "land" should have at least one member. The old domination of Prussia was limited by the provision that no "land" should have more than two-fifths of the total membership of the house.

Unlike other federations, but as in the old Empire, the members were bound to vote according to the instruction of the governments of the units. Unlike as before, the authority of the second chamber was reduced. It could no longer exercise complete veto on legislation. As Strong points out, it did not conform to the federal principle of equal representation of the units. It also did not give the individual units the effective voice in the centre, which was possessed by the Bundesrath.

The Reichstag was the seat of political power. It was elected by universal suffrage, and age qualification of the voters was twenty

years and more. The election was for a period of four years by the method of proportional representation. For this election, Germany was formed into thirty-five districts. A list of candidates was put up by each party for each district. The voters voted, not for individuals, but for the lists. If a list got 60,000 votes, it was entitled to one seat. The candidates mentioned in the list were elected according to the order given in the list, on the theory that the candidates whose names were set down first were those whom the party preferred to others who were lower down in the list. For the purpose of counting the surplus votes, the districts were grouped into seventeen unions and the surplus votes of each party list were now added together. If the surplus exceeded sixty thousand votes, the party now secured another member. For the final count, the Reich was taken as a whole and the surplus votes still remaining for each party lists were added together, and a further allotment of seats made if necessary. The parties, of course, prepared fresh union and national lists for this purpose. If even after this, there was still a surplus left to any party, every fraction over 30,000 votes entitled the party to another seat. But this right is qualified by the fact that no party could obtain more seats in the counting of the union and national lists than the number which it had already secured in the districts. This particular variety of proportional representation was called the Baden Plan. It was claimed that this system was against the rise of purely local parties. Still this system did not prevent the development of numerous parties. In the election of 1924, seven parties were represented in the legislature. In 1932, there were thirty-eight parties. The members were not bound by any mandate, but the "lands" were entitled to send representatives to explain the stand of their governments with regard to any matter being discussed.

Both houses worked mainly through committees which were formed according to proportional representation. All bills were referred to these committees. But by convention, important bills were first considered by the party groups, because the party representatives in the committees had to obey instructions given to them by the party. Thus every important question was settled in party meetings. Hence the work of the committees was not so important as in England or in the United States. A permanent committee kept the foreign policy of the government under observation and control.

If the government altered its policy according to the wishes of the party leaders, it would have a smooth time in the legislature. Interpellations were allowed, but, unlike France, no vote was taken. So this formed simply an occasion for the party leaders to declare their particular views on the matter. The interpellation, unlike as in France, did not become a method to throw out the cabinet.

Laws should ordinarily be introduced with the consent of the Reichstrat. Thus, the upper house was not really a revising chamber, as its work was done first. If the government disagreed with the Reichstrat, it could introduce the law in the Reichstag ; but in such cases, they must mention the differing view of the Reichstrat also.

The Reichstrat could protest against any law passed by the Reichstag. In such cases, the law must be again reconsidered by the Reichstag and approved by a two-thirds majority. If the law did not get this majority, the president could order an appeal to the people on this issue. If he did not, the law did not take effect. If the law was passed by the Reichstag by a two thirds majority, even in such cases the president was given the discretion as to whether he should promulgate the law or appeal to the people. With regard to constitutional changes, they must be approved by both houses by two-thirds majorities. But, even if the Reichstrat refused consent, the amendment would become valid within two weeks, unless the Reichstrat wanted a referendum on this matter.

The constitution also provided for direct legislation. The people could initiate constitutional amendments which should then be submitted to a referendum. In the same way, ordinary laws could be initiated and 10 per cent of the voters could call for a referendum on any law except financial bills.

The constitution did not recognise political parties, but inevitably these became important. Those who supported the constitution were mainly the parties of the middle. The Nationalists who belonged to the extreme right believed in the restoration of German military power and the old Prussian traditions of the state. The most important party was the Social Democratic party and its leader, Ebert, was the first president, but, though they were the largest, they were never held firmly together and were hampered by a timid policy. There was an extreme Communist group giving trouble. As there were numerous parties and groups, the governments were based on coalitions and this was worsened by the fact that "the average German is more amenable to the dividing influence of groups than the Englishman or the American."

Another important feature of the constitution was the importance given to economic issues. Even before the war, there was a good deal of state socialism in Germany, as we have seen.

It must be noted that there were factory councils ever since the Act of 1891 allowing committees of workers to help the enforcement of factory regulations. The Weimar Constitution enjoined functional representation. A law of 1920 set up a Works Council in each establishment elected by all employees with power to decide conditions of labour in consultation with employers. The Works Council elected delegates to District Councils. These District Councils elected delegates to a National Workers' Council. In the same way, the employers were organised in their own councils. There were District Economic Councils and a National Economic Council. Nine groups of industries and professions were represented in it. The National Economic Council represented industry, commerce, agriculture and the professions including civil servants. The state also sent some representatives. As its functions were advisory, it never became a

rival to the Reichstag ; but it had the right to consider all bills dealing with social and economic matters before they were submitted to the Reichstag. It could also introduce into the Reichstag social and economic measures proposed by itself.[1] A proposal disapproved by the economic councils could still be passed by the Reichstag. These councils did not constitute a parliament They were only gatherings of workers, consumers, officials, men of liberal professions, and eminent economists selected by the government. Voting in the councils was by groups and not by individuals. The constitution allowed the centre, the state or the municipality to take over a business enterprise. Such enterprises could be supervised and administered by the economic councils. The government was often influenced by the opinion of the councils. The council also did valuable work by their enquiries and by their reports, and they helped to lessen the strife of classes. But the working of these functional bodies was not completely satisfactory. Experience showed that each group insisted on its importance and discredited the importance of others. Besides this want of harmony, it was too large and unwieldy. Bonn (*The Crisis of European Democracy,* 1925) concludes that it has only done a lot of lengthy debating and no important change has been effected.

During World War I, owing to needs of production, the working day was lengthened for labour, and even women and children were exploited. After the war, the Weimar Constitution enforced a general eight-hour day, though, in practice, many exemptions were given to provide increased industrial output needed for payment of reparations. The constitution conceded the right of combination to workers. The Majority Socialists organized all Socialist unions in 1919 into the General Federation of German Unions. The Centre Party organized the Federation of Christian Trade Unions with a moderate programme and stress on religion. Unions also developed in agriculture.

The constitutions of the units differed. In every "land" universal suffrage, proportional representation, republican government and a responsible ministry were imposed compulsorily by the constitution. All the "lands" framed their own constitutions and most of them had a single chamber and a plural executive responsible to it. Usually, there was no president and the Ministry was the executive. Prussia, the most important state, had a lower house called *Landtag.* The ministry need not resign unless it was defeated by a majority of all the members of this house. Even in such cases, it could dissolve the lower house ; but for this it must get the consent of the presidents of both the chambers. Prussia also was cut up into provinces, each province having its own diet. The constitution of the "lands" thus presented a combination of plural executives with responsible government.

[1] See *International Affairs* Jan.-Feb., 1934, article "Economic Policy of the German Government". A good study of the council is in Finer, *Representative Government and Parliament of Industry.*

The old judicial organization was continued. The highest court in civil and criminal cases was at Leipzig. The Supreme Federal Court settled constitutional disputes. But it was not a regular court and was set up only on occasions. Before the war, officials directly appointed by the states looked after local government. Now, local government was entrusted to popularly elected bodies.

Though the Socialist party carried through the transition to the Republic and the first President was a Socialist leader, the Revolution mas essentially a middle-class revolt against the *Junker* oligarchy, and the industrial capitalists profited. The Socialists government had to repress by force a minority group or Socialists called the Spartacists. It was now that Liebknecht, the leader of the extremists, was shot. In the elections of 1919, the Socialists were the biggest single party and formed the government with the help of the middle groups. They also had a majority in most of the states and municipalities. Their programme was moderate, as contrasted with the full-fledged Marxism they professed before the war. As usual an annual party congress elected the executive of the party and a number of committees looked after various aspects of national welfare.

But the prestige of the Socialists was affected by the humiliations which were inflicted on Germany after the armistice. In the 1920 elections, the middle class parties were stronger and the purely Socialist government gave place to coalitions. After 1922, the Socialists became a minority in the Reichstag. The French occupation of the Ruhr in 1923 strengthened both the reactionary groups like the Monarchists and the radical groups like the Communists. Coalition with middle classes made the rank and file of the Socialist party lukewarm. The Germans were also unfamiliar with parliamentary democracy and were accustomed to obey orders. It has been pointed out that, like Frenchmen but unlike the English, the Germans are capable of enthusiasm for an abstract cause. But, unlike both of them, they are disciplined and accept external authority readily. Thus, even German trade unions developed from a centre and were centralised, unlike the English unions which are federations and the French unions which have practical local autonomy.

The Weimar Constitution was never popular. It was identified from the start with the humiliation of the defeat of World War I. The government set up under it was unpopular, because it had to carry out the provisions of the Peace of Versailles. The old Prussian militarists hankered after a revival of German power. As the Social Democratic party had to seek coalitions with the other groups and hence could not carry out enough social legislation, the working classes were dissatisfied. There was really no zeal for the Weimar Republic.

Meanwhile the economic position deteriorated. After World War I, there was a post-war boom. But there soon followed a

setback. Abandonment of state control of industry and trade disorganized both. The transition of production from war to that for peace was difficult. Demobilised soldiers were unemployed. The Russian Revolution which disturbed trade with Russia removed a market for West European manufactures and a source of food for Western Europe. Trade was hampered by high tariffs even in the new states as a result of the growth of nationalism. The heavy burden of German reparations and of the foreign debts of other states affected international exchange. Over-issue of paper money led to depreciation. It was not till 1923 that currency was stabilised to some extent.

All countries had met the huge expenditure of the war mainly by loans, as only a small part could be met by taxation. While Germany had no foreign markets, England and France used the London financial market for raising loans. They had also large foreign investments and U.S.A. also helped them. Britain was the chief lender till U.S.A. joined the war. On the other hand, Germany's allies were only counting on her.

By 1919, the total external debt of Britain was 6,000 million dollars. But she had lent 10,000 million dollars. France's total external debt was 6,400 million dollars; but she had lent only 3,000 million dollars. The loan given by U.S.A. amounted to 7,000 million dollars, and, after the peace, further loans were also received from her, so that, by 1920, this loan had increased to 9,500 million dollars. And, by 1923, to 12,000 million dollars.[1]

In the Balfour Note, Britain declared that she would collect only that amount from her debtors which were needed for repaying her debt to U.S.A. Apart from the debts due from Russia and Reparations from Germany, the amount due to Britain was 6,000 million dollars. Proposals for all-round cancellation of debts did not find favour in U.S.A. Hence, agreements had to be made funding these debts at a particular figure and providing for gradual payments in instalments.[2]

The situation in Germany became, however, bad. Germany had been held responsible for all damage suffered by the Allies. But the total sum due as Reparations for this was not fixed by the peace treaty, as there was no agreement. In 1929, a Reparations Commission was set up to fix the amount, and, it fixed it at 33,000 million dollars. The Commission failed to take into account Germany's capacity to pay. Germany had lost territories like Alsace-Lorraine, Upper Silesia, the Saar basin, agricultural estates of East Prussia

[1]In 1920, Britain had to pay to U.S.A. 4,277 million dollars; France, 2,997 million dollars; Italy 1,631 million dollars; the other countries, 680 million dollars. In 1923, Britain's share was 4,577 million dollars; France's 4,137 million dollars; Italy's 2,097 million dollars. Britain stopped her payment in 1933. The debt then in default from her to U.S.A. was 7,783 million dollars.

[2]Gregory, *Foreign Exchange Before, During and After the War.*

and her colonies. Thus, her resources had become diminished. She had also to make deliveries in kind to the Allies, like coal and meet the expenses of the Allied forces in the Rhineland. Inflation depreciated the mark. Hence, Germany failed to pay according to the schedule. Britain favoured some relaxation. Unlike France, which was largely self-supporting, England depended upon foreign commerce, and she wanted German economy to revive so as to absorb her exports like coal. But political feelings influenced France against any relaxation. France and Belgium, declaring Germany a defaulter, occupied the Ruhr valley, the industrial heart of Germany. France thought that, as in the Saar, she could own and work the coal-mines here. But the Germans organized passive resistance and the industry could not work. The only result was heavy military expenditure for France. But this event still further affected German economy. A committee under General Dawes of U.S.A. recommended that the Reparations should be on a sliding scale of payments which should gradually increase with German recovery and recommended measures to balance German budget with a foreign loan. It we also agreed that future German defaults should be countered only by joint action of the Allies and, in 1925, the French and the Belgian troops withdrew from the Ruhr. U.S.A. advanced the main part of the loan to Germany and German currency was stabilized by the issue of a new *Rentenmark*. U.S.A. was then in a boom period and could send capital to Germany to help not only German industry but also German municipalities. But the interest payable for these loans along with the annual Reparations imposed a dangerous strain on German foreign exchange. The Reparation payments went mostly to France, and the interest on commercial debts mainly to U.S.A. and Britain. German exports were also hampered by tariff restrictions of other countries. Rationalisation, meant to lower the sale price of German goods in foreign markets, increased unemployment in Germany. From 1924 to 1928, Germany kept her obligations with great difficulty helped by this rationalisation and import of capital mainly from U.S.A. But the great economic depression which began in 1929 worsened the situation.

The depression of 1929 in America induced American capitalists to recall their foreign investments. The world depression depressed German exports still further. Germany borrowed from Britain and other European neighbours. It became clear that some concession should be made to her. Hence came the Young Plan of 1930 which limited the total Reparations to 5,536 million pounds, unlike the Dawes Plan. A Bank of International Settlements was set up at Basle in 1930 to supervise payments. But German finances did not improve. The patriotic nationalist group, which believed that Germany was betrayed by the Socialists, increased in power. Industrialists, afraid of increasing Communism, began to support this group. In 1930, the Chancellor, Dr. Brüning, forced by a deficit which had continued for five years, proposed taxes which the Reichstag refused to accept. Under his advice, the President dissolved the

Reichstag and imposed the taxes by decree. This made the Rightists and the Communists get substantial gains in the elections at the expense of the Socialists. As a result of world depression, unemployment increased further. Fearing the collapse of Germany, President Hoover of U.S.A. proposed a moratorium on inter-governmental debt for a year. Credit facilities were given to the Reich Bank by the Bank of International Settlements. But all this was a mere palliative. American public opinion, in the face of depression at home, was against cancellation of all war payments and extension of the moratorium. Big debts due to Britain from other countries had not been paid, and so, Britain had paid only a part of her debt to U.S.A. Even in 1931, England had to go off the gold standard, an example imitated by 22 countries. Still, commodity prices were falling.

Dr. Brüning resigned in 1932 when the President refused to accept his proposal for expropriating certain estates in Prussia and distributing them to the unemployed. He was followed by chancellors who had no support in the Reichstag. In 1932, a conference at Lausanne reduced the Reparations to £150 million with a moratorium for three years. Germany had till now paid as Reparations, £16,25,00,00,000. She had still to pay interest on foreign debts. The conference favoured cancellation of all war payments, but only if U.S.A. agreed.[1] This agreement was not forthcoming. The World Economic Conference of 1933 representing sixty-seven states also failed to improve the position. This gave opportunity in Germany to the National Socialist Workers' Party or the Nazis which was organized under Hitler. Even in 1923, he had organized a rising (Munich *Putsch*) which had failed. In the elections of 1933, the Nazis received only 44% of the popular vote. But, in combination with the Nationalists, they held 340 of the 647 seats in the Reichstag and thus dominated it.

In 1933, Hitler became the chancellor and was given large administrative and legislative powers by law. The Reichstag passed the Enabling Act of 1933 giving the government authority to make laws by decree. Hitler declared, "It would be a contradiction to our sense of the national uprising and insufficient for our purpose if the government were to beg the assent of the Reichstag in each specific case." Thus began the Third Reich. In the same year, the Nazi party was given a commanding position in the state. The Social Democratic party which, according to the Nazis, had humiliated Germany by signing the peace of Versailles was suppressed. The Communists and the other parties were suppressed. The Nazis became the only political party. But, unlike Italy, the party was allowed to retain an organization separate from the state. The constitution and the principles of the party were decided by Hitler, who also appointed the party officials. In 1933, President Von Hindenburg died and Hitler combined in himself the office of the president and the chancellor. He adopted the title of *Fuhrer* with a term of

[1] Cole (*Guide through World Chaos*) explains the position clearly.

office for life and began to govern with the help of seven ministers chosen by him.

The Nazi party was based to the some extent on views already expounded by German writers before his time.[1] It has been suggested that the fundamentals of Hitlerism were not original and existed in Germany before, and that the German nation which produced Goethe and Beethoven could also produce Hitler. Liberalism in the British and French sense never took root in Germany. Hegel and Treitschke had more influence than Kant. There was first the doctrine of the absolute authority of the state. This was affirmed long before by the German philosopher, Hegel, who declared that the state is its own end and object. According to this theory, the supremacy of the state was absolute. The individual existed for the state and had no rights against the state. This was the doctrine of Totalitarianism. The state had supreme power to control and regulate the activities of all individuals and groups. According to this view, the independent trade union movement, which was internationally organized, had no place in the state. So, the independent trade unionism was suppressed. Jews who owed allegiance to an international Jewry must be put down. It also led Hitler to fight with the church. The Catholics submitted to the control of the foreign Popes. The Catholic church had never accepted the supremacy of an absolute state. So conflict was inevitable. In the same way, the Protestant Evangelical church upheld the claims of conscience against the state. So Hitler had to fight with it also. Before the war, this Evangelical church was the established church and the Kaiser was the head. The church remained subject to the state. But the Weimar constitution had made the church independent. In 1933, Hitler again imposed control on the church. The state also would not tolerate independent standards of morals. So, even art, literature, and science came under its control. History was interpreted to suit the new theory, and philosophy was used to justify the theories of the Nazis. Autonomy of the universities disappeared. In the same way, all opposition to the state was to be crushed. Thus, liberty of the press, and right of free speech disappeared.[2]

The state also dominated over the economic life of the community. The German economist, List, held even earlier that the state should order the economic life of the community. In 1934, a leader was appointed in each industry to fix wages and maintain coordination between the different concerns by grouping them. Strikes and lock-outs were declared illegal. Prices were fixed by the state. Unemployment was reduced by a scheme of public works and military rearmament. It was learnt from the last war that organiza-

[1] Adolf Wagner (an economist of the Bismarckian period) preached intense nationalism, a German mission, anti-Semitism and state control.

[2] Carl Schmidt, the political philosopher of the Nazi state, propounded the idea of the Triune State—one state, one people, and one party, the party being the central unit, dominating the other two.

tion of industry was as important for the purpose of the war as organization of man-power. The Nazis planned to make Germany self-sufficient in raw materials and food in times of war. This policy called Autarchy was carefully planned. Agriculture was encouraged to increase food supply. The first four-year plan was meant to abolish unemployment. The second four-year plan was designed to promote autarchy. Thus, Germany became self-sufficient in potatoes, rye, sugar and wheat. *Ersatz* (substitute preparations) were encouraged so as to encourage Germany's self-sufficiency in many commodities. The systematic policy of land settlements in the eastern provinces helped to plant a large garrison of German peasants, which would help to defend that area. As in Russia, labour was mobilised and working hours increased. Such a regimentation was possible in a totalitarian state unlike a democracy.

Another cardinal principle of Nazism was that force was the basis of political authority and war formed a school to bring out the virile qualities of the race. Fichte and Nietzsche had glorified war even in the 19th century. In his foreign policy, Hitler's aim was to restore German glory by war. Thus, the former flag of the Empire was restored and with it the Nazi symbol, the Swastika, was combined. Along with this glorification of war was the belief in the superiority of the German race. It was believed that the Nordic race was the *Herrenvolken* (Master-race) and, amongst the Nordic races, the German race was the best. Such a race was entitled to whatever territory it wanted to maintain itself in vigour. This territory was the *Lebensraum* or "living space". The Nazis believed that the Germans were, therefore, destined to rule the world. This theory was held even before. Fichte, early in the last century, extolled the German race. As early as 1853-55, Count de Gobineau in his *Essay on the Inequality of Human Race* argued about the superiority of the "Aryan" race over others. Nietzsche (1844-1900), basing himself on Darwin's theory of evolution, classified mankind into a superior and an ordinary breed. The former had "master-morality" which disregarded all checks which stood in the way of will to power. Those who have this will strongly developed are fitted to survive. So superiority does not lie in wisdom, as Plato thought, but in a resolve to exercise power over others.

This Race-Theory of History was also supported by Houston Stewart Chamberlain who in his *Foundations of the 19th Century* (1899) argued that the Teutonic race was inherently superior and that the Germans who were the greatest of Teutons, were destined for world leadership. This theory also meant that the purity of the stock must be maintained to enable it to discharge its historic mission. This explains the action taken by Hitler against the Jews and non-Germans in Germany. According to Hitler, anti-Semitism was necessary, because the Jews in Germany had gained dangerous power in finance, business and professions, shutting out the Aryan Germans. So, the Jews were shut out of all professions, deprived of the vote and ill-treated. Besides the Jews, Germans of non-Aryan descent were also disfranchised.

Another important principle of the Nazis was the principle of leadership (*das Fuhrerprinzip*). According to the Nazis, the world had been corrupted by a pluto-democracy. They regarded democracy as antiquated and inefficient and held that its days were numbered. This worship of a great leader should also be traced to early German thought. The German writer Spengler (1880-1936) scoffed at democracy, praised Caesarism and exalted "instinct" over "reason". This glorification of instinct could be traced also to Herder.

Hitler was helped by a number of associates. The most important of these was Goering. Goebbels, most ardent anti-Semite, looked after Nazi propaganda. The Nazis claimed that they were supported by the consent of the people. But, unlike a democracy, no unfettered right of discussion was allowed. In any plebiscite, the people had to say only "Yes" or "No".

The Nazi party was hierarchial in form with Hitler as the head and a Deputy Leader. Territorially, the party was branched on a district and local basis under leaders appointed by Hitler. The tone of the party was kept up by frequent purges as in Russia, and there was an annual party congress at Nuremberg. The members were exempted from the ordinary penal law, but were under a party discipline regulated by party tribunals. They held most of the principal offices. Associations of professions, youths and a Labour front were affiliated with the party.[1]

Hitler in his *Mein Kampf* gave an important place to propaganda which should be specially designed for the masses, appealing to feelings rather than reason, use slogans, repeatedly and rely on speeches than on writings. To control public opinion, the Nazis relied on a controlled press, a secret service, propaganda, use of education in schools and hypnotising the youths as A.J. Mackenzie points out (*Propaganda*). Thus, great importance was given to symbolism and spectacular displays with processions, and pageants with light and colour. The Nazi salute and the use of music was borrowed from the Italian Fascists. The use of huge massed parades was imitated from Communist Russia. Himmler looked after the secret police. Long before he came to power, Hitler had built up a private army called the Brown Shirt Storm Troops. In 1934, this was replaced by the *Schutz-staffel* (called in short S.S. as a second army) which wore black uniforms. From this was formed the secret police called the Gestapo under Himmler. Another associate of Hitler, Rosenburg, was the chief exponent of the Nordic ideology. He condemned Christianity because of its Jewish origin. Note that Nietzsche held that Christianity was the faith of the ordinary breed, as it dignified cowardice as humility and inefficiency as kindness.

[1] Article "A Critique of Nazism" in *Modern Review*, January, 1944. Prof Lasswell discusses the psychology of Hitlerism in the *Political Quarterly*, July-Sept., 1933. A lucid comment is the article in *Round Table* (June, 1933), A Recoil from Freedom.

With regard to the constitution, in 1934, a bill was passed terminating the federal structure. Centralisation was carried out to convert Germany into a unitary state. The "lands" were converted into administrative divisions under governors (*statt-halters*). Their separate rights were transferred to the Reich. The Reichstrat was abolished and all state legislatures were dissolved. The democratic system of the Weimar constitution was thus destroyed. Though the Reichstag continued, it was dominated by the Nazis. It met only to hear announcements made by the *Fuhrer* and to pass the laws framed by him. All power was centered in the *Fuhrer* who was also empowered to appoint his successor.

The coalition cabinet headed by Hitler in 1933 was gradually changed into a Nazi one. The leader was helped by three Chancellors and a number of ministers whose number increased to fifteen by 1945. But, the cabinet was simply a group of departmental heads obeying Hitler.

Though the old judicial system was continued, the judiciary was "purged". In 1936, People's Courts were created to deal with political offences by summary procedure, and the condemned were sent to concentration camps. Labour cases went to special Honour Courts. Party Courts dealt with breaches of the law by members of the Nazi party. Thus, judicial administration was in practice under the executive, which also created new political offences.

Provinces were placed under *Gauleiters*, and districts (*Kreis*) under *Kreisleiters*. All elected municipal councils were replaced by councils chosen by local party agents, and supervised by the centre. Thus, democracy in local government disappeared. As, according to Nazi theory, races were unequal, the Poles, Czechs etc., in the occupied areas were subjected to discrimination.

The state also embarked on complete control of the economic sphere. Owing to the allied blockade, food conditions had become serious in 1916 during World War I. Even after the war, there was no improvement, as Germany lost territory and had to deliver food material and livestock under the peace treaty. So, Hitler had to attend to this question. The Nazis also held to the ideal of national self-sufficiency and believed that agriculturists formed a robust community which would be highly useful in war. Hence, youths were carefully educated in the practice of agriculture and assigned lands. Societies for land settlement and marketing boards were set up by the state. Though Hitler promised redistribution of land, he could not do so completely, as he did not want to offend the *Junkers* whose families supplied the generals of his army. But all available state land was cut up into holdings and distributed to suitable applicants.

Labour service was declared compulsory for all Germans even from June, 1935. All persons of both sexes from eighteen to twenty-five had to work for six months in schemes of public utility like road-making, forest work etc. After 1938, women were conscripted for farm

labour, and child labour laws were suspended. The old trade unions were suspended and their funds confiscated by a law of 1934.[1] The old Employers' Associations were also abolished. In every concern, councils representing workers and employers and local Nazis were set up. These were supervised by Labour Trustees appointed by the state for the different areas. These trustees controlled all concerns in that area and prosecuted before Courts of Social Honour workers who disturbed harmony and employers who ill-used labour. The whole organization called the Labour Front did not include agriculturists and state officials. Industry and commerce was divided into twelve groups - mining, electricity, banking, commerce, transport, metal, chemical, food etc., each responsible to a leader appointed by the state. The state could create or dissolve industrial organizations.

Imports necessarily increased so as to provide materials for the new industries. The consequent drain on the exchange resources of the Reich Bank made the government adopt severe steps from 1934. State Commissioners were appointed to control imports. German industry and agriculture came to be controlled by twenty-five Control Officers so that only such raw materials were imported which could be paid for, and increase of output was checked. At the same time, a vigorous policy of manufacturing substitutes was developed so as to lessen imports. Lack of exchange led also to barter agreements with some countries so that payment might be made in kind for their exports. Banks were also controlled. A law of 1934 set up state control over *Kartells* so that they could not misuse their monopoly. Frankel (*The Dual State*) holds, as his main thesis, that a "normative state" and a "prerogative state" were united in Germany. An iron-clad system of monopoly capitalism was associated with bureaucratic state control.

Social life was controlled by a Reich Chamber of Culture set up in 1933 which had seven sections to deal with literature, the press, the theatre, music, cinema, radio and art.

Comparison with Fascism. While Mussolini was a brilliant thinker, Hitler was not educated. Mussolini, in his earlier days, had been a teacher and then the editor of the leading Socialist newspaper, *Avanti*. His book on Fascism is well-reasoned. But, Hitler's *Mein Kampf* contains absurd scientific hypotheses put forward in a pedantic way *e.g.*, France, by absorbing alien races like the Negroes, has become unfit to live ; the Teutons have a sacred mission ; the Jews form a sinister, secret society etc. While Hitler was a real ruler, Mussolini was not the *de-jure* ruler, as Italy had a king. While Mussolini was a leader from the first, Hitler became the unquestioned leader only in 1926. Unlike as in Italy, the Nazis kept up a party organization apart from the state. Italy retained the old Senate appointed for life. Fascism laid more stress on corporate organization of industry. But there was no functional representa-

[1]See article "Economic Position in Germany" in *Contemporary Review* Feb., 1934. See also *International Affairs*, Jan.-Feb., 1934.

tion in Germany. Fascism had originally no race theory. Mussolini adopted it only later. But the resemblances between Hitler and Mussolini are more impressive. Both were summoned to power by the Head of the State who had no other alternative. Both were first allied with groups whose programme they scorned and whom they later got rid of. Both used terrorism, bloodshed, bluster and other methods of force. Both had no belief in democracy and cancelled those parts of the constitution they disliked. Both exercised control over all activities of the community and used the radio, press, film and propaganda for this purpose. Both allowed only their own party and dictated its policy and constitution. The party machine was well disciplined and included a secret service. The party was identified with the state. Both did some useful work for the state in agriculture and industry and maintained efficient government. Both had no regard for moral principles. They glorified war as an instrument of national policy and believed in imperialism. Hence, they kept up armies for aggression. Both unscrupulously used spies and "blood-purges" to destroy their enemies.

After World War II, Germany came under the military occupation of Britain, France, U.S.A. and Russia. An allied tribunal tried the surviving Nazi leaders at Nuremburg. Some were executed and some imprisoned.

The American zone was in South-West Germany and included Bavaria, Hesse and parts of Wurtemberg and Baden. The British held North-West Germany, including parts of Westphalia, Saxony, Hanover and Schleswig-Holstein. The French occupied roughly a western zone along the French frontier including parts of Wurtemberg and Baden, the Rhineland and the Saar. The Russians held the eastern half of Germany which included part of Saxony, Thuringia and Mecklenburg. The Russian zone was largely modelled on the Soviet system and the estates of the *Junkers* were nationalised. In the other zones, some kind of local autonomy was encouraged. But the French detached the Saar from Germany. In 1947, this area, which was rich in coal, was connected to France economically, but was given autonomy under a constitution. A French High Commissioner, who is the supreme authority, controlled defence and foreign policy. The important industrial area of West Germany, the Ruhr, which is the centre of German steel and coal production, is under an International Authority of which Germany is also a member. The original object of the occupation Powers was to destroy all heavy industry in Germany and limit other industries as a measure of disarmament. But, soon, it was realised that economic reconstruction of Germany was essential, as the economic interests of other West European lands were entangled with German economy. The German paper *Mark* had depreciated owing to inflation. So, in 1948, the currency was reformed. U.S.A. extended economic help to Germany through the Marshall Aid. Restrictions on industry were lifted. At the same time, *Kartells* were broken up and the control of banks on industry relaxed.

The occupying Powers failed to agree about the unification of Germany. Finally, the three Western Powers, Britain, France and U.S.A. agreed to transfer power in their zones to a West German State, subject to certain reservations.

In 1948, the three Western Powers allowed West Germany which was under their control to form a Constituent Assembly to decide its government. This Assembly prepared the draft constitution for the Second German Republic. A declaration of civil rights was provided. Bearing in mind the experience of the Nazi rule, it declared unconstitutional any attempt to disturb "the free and democratic basic order of the state", as also preparation for aggressive war. The federation consisted of eleven units, *i.e.*, nine "lands" and the cities of Hamburg and Bremen. These "lands" were Baden, Bavaria, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Schleswig-Holstein, Wurtemberg-Baden and Wurtemberg-Hohenzollern. By a plebiscite held in 1951, the three "lands" of Baden, Wurtemberg-Baden and Wurtemberg-Hohenzollern were united into one unit called Baden-Wurtemberg. Thus, the number of units is now reduced to nine. The old historic Prussia was disintegrated by the occupying Powers and has now disappeared. Part of it went to Russia and part to Poland. Some others went to the new state of West Germany. Berlin, the former capital, remains under the four occupying Powers. The West German state is a federal republic in which the units have a large measure of administrative independence. The federation controls foreign affairs, trade and commerce, currency, nationality, federal transport and posts and telegraphs. It has concurrent powers with the state governments in many matters, and can legislate on all major economic and social questions. A federal law overrides a state law. It can take executive action against states neglecting their federal duty. In 1953, it was empowered by a constitutional amendment to organize defence including conscription, in the event of Germany joining the West European Union. The states controlled matters like police and education. The federation has assigned for itself certain taxes, but the states are assigned property taxes, death duties, local taxes and a share of income and corporation taxes.

Since Berlin was still under the occupation of the four Powers, the federal government is stationed at Bonn. The President of the republic is elected for five years by a joint session of the Federal Diet and delegates from State Diets. He is re-eligible for only one term more. The government is carried on by a council of ministers headed by the chancellor, chosen by the lower house of parliament. The upper house, called the Bundesrat or the Federal Council, represents the governments of the states. The states have from three to six delegates according to their population. The lower house, called the Bundestag, is directly elected by the people by adult suffrage for four years. It consists of about four hundred members, while the upper house has about forty-three members. The members of the upper house are appointed directly by the state governments. As regards

the lower house, 60% of the members are elected from constituencies and 40% by proportional representation from national lists. Deadlocks between the two houses are overcome when the lower house repasses the bill by a simple majority. But, constitutional changes need a two-thirds majority in both houses. The ministry is responsible to the lower house. But when a motion of no-confidence is introduced, the vote on it should be taken only after two days. Even then, the motion must be passed only, if the Diet is able to choose an alternative ministry. Otherwise, the Diet is itself dissolved. A Constitutional Court has been set up to disallow laws against the constitution. The judiciary has been re-constituted on a federal basis.

As usual, parliament is divided into parties of whom the Social Democrats and the Christian Democrats are the most important.[1] Both are anti-Communist. The Catholic church to which the majority in the republic belong, is also anti-Communist. There are numerous splinter groups. One important development is the spread of the right of workers to participate in industrial management, according to a law of 1951 which set up workers' councils.

The Weimar Republic purchased the shares of several companies. The Nazis set up several state projects. So, the West German State owned a number of productive enterprises of all kinds including production of a large quantity of coal, iron, aluminium, gas, and electricity. It also owns railways and many long-distance bus services.

Like the first Republic, the second developed after a great war. Both began in cities closer to cultural, rather than military, traditions. The first republic started at Weimar associated with Goethe and Schiller. The second began in Bonn, the birth-place of Beethoven.

East Germany, which was under Russian control, was proclaimed by Russia in 1954 as a sovereign state. It is also a federal republic. The "lands" included in this are the western parts of Saxony, Thuringia, Brandenburg, Anhalt, Eastern Mecklenburg and Western Pomerania. The number of units is fourteen. There is a federal legislature of two houses. But the Communists hold control and voters could only say "yes" or "no" to the lists of candidates put forward by them. The Social Democratic party has been suppressed. The minor parties, tolerated so far, are powerless to defy the Communists. Each state has a provincial parliament called *Landtag* and an Executive Council with commissions for all spheres of government. But the decisions of local assemblies could be annulled by the central legislature. Land has been collectivised.

Berlin is in a special position. West Berlin is practically, though not in law, a tenth member of the West German Federation. It

[1] The Christian Democrats, while advocating the right of private property, favour some measure of state control. The Free Democrats are more conservative.

has a diet of two houses and is headed by a Burgomaster. But American, British and French occupation authorities continue here. East Berlin is under Russian occupation. In 1953, it was given a position similar to the units of East Germany with an assembly which appoints commissions to supervise the work of the different branches of the government and is headed by a magistrate.

When the West German state was set up in 1949, the occupying military governments gave place to high commissioners appointed by the three occupying Powers. The three Powers reserved for themselves certain limited rights dealing with German disarmament and foreign policy. The new republic had to face the problem of devastation and disorganization which resulted from the war. There was the problem of the refugees of uprooted Germans from the German areas east of the Oder-Neisse line which went to Russia and Poland and of Sudetan Germans expelled from Czechoslovakia. There was also the problem of union with East Germany which is practically under Russian control.

Germany has lost all East Prussia, Pomerania, parts of Brandenburg and all Silesia either to Russia or to Poland. This has deprived her of her most industrialised area. She has also to rehabilitate German minorities repatriated from Poland, Hungary and Czechoslovakia. As contrasted with World War I, no fixed amount in money was claimed as Reparations ; but, Germany has to render compensation for the damage caused by her troops in the areas she occupied. The partition of Germany has also affected Germany from the economic standpoint. The major agricultural areas are in East Germany, while West Germany is highly industrialised. Most of the Germans want re-unification ; but, the "Cold War" between Russia and the Western Powers prevents this.

Britain, France, U.S.A., Canada, Belgium, Holland, Luxembourg, Italy and West Germany entered into a pact in 1954 by which 9½ years of occupation of West Germany will be ended and the forty-eight million people in West Germany will become once again sovereign. West Germany would be allowed to join the Western European Union and allowed to rearm. But she undertakes also never to achieve the change of her frontiers by force. West Berlin will continue under the occupation Powers. Even early in the year, Russia had already declared the sixteen million people in East Germany sovereign. Thus, the partition of Germany is confirmed.

We shall, now, turn to Austria, which, though an independent state, is mainly German in population.

AUSTRIA

Her empire was of doubtful benefit to Austria. Her rule over the Netherlands, Naples, Milan and Sardinia after the Spanish Succession War really weakened her. "The Hapsburgs stretched out their octopus arm for whatever territory lay within reach." Even after

they lost all these areas, they ruled over a vast empire. The Czechs and Slovaks of Bohemia and Moravia were discontented and dreamed of reviving their old state. The Poles in East Galilia and Buckovina never forgot their separate nationality. The Italians in Tyrol were dissatisfied, as also the Rumanians in Transylvania in the east and the Yugoslavs in Croatia, Slovenia, Istria and Dalmatia (between the Danube and the Adriatic). The Yugoslavs differed from their kinsmen—the Serbs—only in their Catholic faith and in writing their essentially Slavonic language in the Latin script. The Magyars in Hungary wanted independence. In 1878, Austria created further trouble for herself by annexing Bosnia and Herzegovina (peopled by Yugoslavs). Everywhere, the nationalities were rebellious. Serbia and Russia were disliked by Austria for encouraging Pan-Slavism. The assumption of the German minority inhabiting Austria that the Austrian empire ought to be essentially German was never accepted by the non-German population. The conflicts of jarring races filled Austrian history.

In 1867, Austria came to terms with Hungary and formed a Dual Monarchy called Austria-Hungary. Hungary was restored its constitution including the Chamber of Magnates and Chamber of Deputies with a responsible ministry. In Hungary, the emperor of Austria ruled as a constitutional monarch. But, in Austria, he continued as a despot. The parliament there remained a farce till 1907[1]. Lowell remarks, "Nowhere outside Russia is the dread of free expression of opinion prevalent in a more marked form. Fundamental laws about personal liberty were ineffectively guaranteed and violently broken. All constitutional rights can even be suspended by a proclamation of the state of siege.....The activity of the Austrian police is indeed so rigorous and all-pervasive that every man habitually carries about him an official certificate of his identity and good standing." There was rigid censorship and close control of public gatherings. A vast bureaucracy used its great power arbitrarily and corruptly. Provincial diets could not communicate with each other and all their proceedings were controlled by the emperor whose will was law.

A suffrage bill of 1907 abolished the old class system of voting and set up manhood suffrage. But the country was split into racial groups and each group was allotted a number of seats in the parliament. A voter could vote only on the register of his own race and for a candidate of his own race. A stable coalition of races to support a ministry was impossible, and government was often carried on without the parliament.

The main racial question in Austria was between the German minority which was the richest and best educated of the groups and the non-German majority. This minority was mainly in Upper Austria and a large part of Lower Austria. But, it was also more widespread than other groups. Hungary had greater constitutional

[1] It was elected on a five-class system in which the rich tax-payers had preponderance.

freedom than Austria, because the Magyars had long political experience, and responsible government worked. But, all political power was concentrated in the hands of the Magyars. The racial question here was also complicated. The Magyars persisted in a ruthless policy of absorbing the other races, like the Croats. Riots and anti-Magyar agitation became common. As regards the Hungarian parliament, the franchise was confined to a restricted electorate dominated by the Magyar landlords, and the subject races had no representation. Since the ruling class kept together, there was no opposition and cabinets were never upset.

The common government was weak. It was also autocratic in its policy. Foreign affairs and defence were ill managed. The Magyar domination of Hungary helped to make its delegation vote solidly together, while the Austrian delegation was composed of differing racial groups.

During World War I, discontent increased, and the government which was purely in the hands of army leaders, went on repressing it both in Austria and Hungary. When the Austrian parliament was finally summoned in 1917, the pent-up discontent burst forth. In 1918, the emperor promised a federation with local autonomy for the subject races. Since the provinces of Austria themselves refused to obey the centre, the device of federalism was used to arrest this separatist tendency. But this plan was partial and belated. The various nationalities declared independence, taking advantage of Austria's defeat The empire disintegrated. Emperor Charles abdicated. The unity of the empire had been really maintained, not by the emperor, but by the army and the bureaucracy. A number of republics arose now—the Austrian Republic, the Hungarian Republic and Czechoslovakia. Rumania and Italy got back their racial areas. Polish areas went to Poland and Yugoslav areas to Yugoslavia.

The Austrian Republic was now much attenuated. A constituent assembly prepared a constitution for a federal republic, to some extent like Switzerland. There were nine provinces with provincial legislatures of one chamber and one executive consisting of a committee. The official at the head of the province was the *Landesharuptmann* who, along with his colleagues, was elected by the provincial diet and was responsible to it. He was, at the same time, given large powers as the agent of the federal government to which he was responsible for these powers. The federal legislature was of two houses : (1) The Federal Council composed of members chosen by provincial legislatures according to the population of the province. This was the second Chamber. (2) The National Council chosen by proportional representation by the people for a term of four years. This lower house was dominant over the other. The constitution could be changed by a two-thirds vote of the lower house. If a referendum was demanded by a third of either chamber, the proposal must be submitted to the people. The President was elected by a joint session of the legislature for a period of four years. The Chancellor and the other ministers

were responsible to parliament, but a curious feature was that, though eligible to sit in the legislature, they must not be members of it. The provincial cabinets shared the same characteristic. A new constitution of 1929 increased the powers of the President. It also provided that, in times of emergency, the executive could issue decrees, though these had to be ratified by parliament when it met later.

The constitution, like that of all the new states, was long, as it incorporated many clauses dealing with individual rights and economic policy. The constitution mentions even the units of local government and their powers. As the state was now entirely inland, no fleet was maintained. A Supreme Court of Justice headed a series of courts. Besides ordinary courts, there were administrative courts. There was also a constitutional court to decide matters like conflicts of jurisdiction and impeachment of state officials.

There arose many parties of whom many favoured union with Germany. When dictatorship developed in Europe, the Austrian government also became authoritarian. In 1938, Austria was forcibly absorbed into the German Reich by Hitler. In 1945, it was liberated. The land became a democratic republic. Once again Russia, Britain, France and America are in occupation of the land in four zones ; but actual government of these has passed from the beginning to Austrian hands. The parliament is elected by proportional representation. The President is the head of the state. But the Chancellor and the other ministers are responsible to parliament. Four provinces including Vienna have their own legislatures. The People's Party (the old Catholic Party) is dominant, the Socialists coming next.

Austria is still divided into occupation zones under Britain, U.S.A., France and Russia. A treaty of 1949 provided for the withdrawal of the occupation forces, but has not been ratified yet.

CHAPTER VI

RUSSIA

THE vast extent of Russia, the variety of its races and the militarism of its rulers aided to make the government despotic. Commencing from the expansion of Russia, the circumstances of its spread also helped absolute monarchy. This despotism was helped by a strong bureaucracy, so much so that some writers regard the executive in Russia as a bureaucratic despotism rather than autocratic. The intellectual classes were deeply dissatisfied. After the defeat of Russia in the war with Japan, popular resentment increased. The intellectuals and the factory workers of the towns took the lead in this movement of 1905. The Tsar, after trying to put it down, was forced to grant a constitution owing to the desire for self-preservation. The constitution of 1905 asserted the absolute supremacy of the emperor. It created a parliament of two houses. The upper house, called the council of the Empire, was partly appointed by the Tsar, and partly elected by organizations like the church, the nobility, the universities, chambers of commerce etc. The members sat for nine years ; but, one-third had to retire every three years. The lower house was called the Duma and was indirectly elected for five years through district assemblies. The government reserved in its own hand the army, foreign policy and matters dealing with the constitution. The constitution did not satisfy the people.

The prevailing discontent is seen in Anarchism and Nihilism spread by Bakunin (1814-76) who spent most of his life in prison or exile. The Socialist Party which held its first meeting in 1898 was banned from the first and had to work in exile. The Liberals composed of businessmen and professional people sought reforms on the lines of Western democracies and organized themselves into a party in 1905.

The later Communist Revolution in Russia has been regarded as the product of the absence there of any freedom. A cruel despotism suppressed all agitation and brutally exploited the workers. Hence, there was a congenial soil for revolt.

The Duma got out of control and demanded more reforms. The government dissolved it, and a decree of 1907 changed the electoral system so as to increase the representation of the landed aristocracy under a complicated indirect system of election. Besides manipulating the suffrage in this way, the elections were also manipulated to secure the return of conservative candidates. Hence, the Duma hereafter became submissive. It had also no important power. At the same time, the government continued repression of every form of advanced thought. The secret police developed to a huge size. The Tsar himself became more and more the puppet of a court

clique. By 1914, even the middle classes were driven to agree with the Socialists that reform could not be secured through constitutional methods. While the ministers were reactionary, the government was corrupt and incompetent. Under these circumstances, Russia entered World War I. In 1917, hunger led to food riots in the capital, Petrograd. The riot developed into a revolution. The Tsar ordered the Duma to adjourn ; but it disobeyed and the army supported it. A self-appointed committee of the Duma requested the Tsar to abdicate in March. The chief party leaders of the Duma formed a provincial government under Kerensky, a moderate Socialist. The Tsar was arrested and Russia proclaimed a republic. Civil liberty was established and all political exiles who were in Siberia were pardoned.

The legal discrimination hitherto practised against the Jews was removed. The special privileges which the church enjoyed were abolished and complete toleration was set up. But the Russian people were unaccustomed to self-government. The workers were dominated by the extreme Socialists called the Bolsheviks. While the workers seized the factories, the peasants seized the estates of the landlords and divided them amongst themselves. All over Russia there grew up a system of councils (Soviets). In the towns these were chosen by the factory workers. In the country, they were chosen by the peasants. In the armies, they were chosen by the soldiers. A council elected by these soviets began to dispute the authority of Duma. Thus, a cleavage developed between the middle class liberals who dominated the provisional government and the workers, the peasants and the soldiers. The war-weary soldiers deserted wholesale. The bureaucracy also collapsed. The Bolsheviks had vigorous leadership and a definite programme. By November, the Soviets seized power overthrowing the provisional government. Their object was to set up a Dictatorship of the Proletariat in which the propertied classes would have no political powers. A Congress of Soviets elected a Council of People's Commissars. This was headed by Lenin, a life-long socialist, and Trotsky, a middle-class Jew with a great gift for organization. This government made peace with Germany and ended the war. Lenin now tried to put Communism into practise. The royal family and many members of the nobility and officials were executed. The church was disestablished. Private property in land, forest, mines, factories, railways, and all agencies of transport and production was taken over by the state without compensation to the owners All loans were repudiated and banks nationalised. All titles were abolished.

In July 1918, the congress of Soviets, styling itself as the All-Russian Congress, adopted a constitution prepared by its leaders. The idea was to set up a Socialist State based on Marxism in which all private ownership of property would be abolished and all means of production, distribution and commerce would be vested in the state for the benefit of the working classes. This dictatorship of the proletariat was expected to disappear after all citizens became workers

and a classless society would emerge. According to the Communist theory, all other classes are "exploiters" or "parasites". Constant vigilance had to be maintained to detect them.

"Soviet" in Russian means a council. We hear of them even in the Revolution of 1905. The transfer of power to the soviets of the workers, peasants and soldiers was the main work of the Bolshevik Revolution. Now, the soviets were converted into the organs of the state. The All-Russian Congress of Soviets proclaimed a new state. The new state was called the Russian Socialist Federative Soviet Republic. The constitution tried to incorporate two conceptions : (1) Government through soviets consisting of representatives elected for short periods. These were subjected to a centre. (2) A Communist Social organization. Thus, the Russian Revolution, unlike other revolutions, was not to be merely a political revolution, but a social and economic revolution. The constitution contained a declaration of the rights of the working classes. The other Soviet republics Ukraine, White Russia and Trans-Caucasia were organized on the same model, and the four Soviet Republics decided to join together into a close federation in 1922.[1] Following this, the constitution was revised in 1924 and the state assumed the name of the Union of Socialist Soviet Republics (U.S.S.R.).

The Constitution drawn up in 1924 set up a complicated government. The highest organ was the All-Russian Congress of Soviets made up of delegates from the soviets of the towns and the countryside. Local village soviets (*selo*) elected one deputy for every hundred inhabitants to the district soviets (*volost*). In the same way, factory soviets consisting of the workers elected delegates to the city soviets. The district soviets elected one delegate each to the county congress (*uyezd*), and this elected one deputy each to the regional congress (*oblast*). The city soviets also elected one delegate for every five thousand voters to the regional congress. The regional congress elected members to the All-Russian Congress of Soviets. Further, there was also a provincial congress (*gubernia*), the gubernia being an historical administrative area, to which the city soviets elected one delegate for every two thousand voters and the district soviets one delegate for every ten thousand voters. The provincial congress elected one delegate for every one hundred twenty-five thousand voters to the All-Russian Congress of Soviets. Besides, the city soviets elected one delegate to the All-Russian Congress of Soviets for every twenty-five thousand voters. Thus, we find that the cities were doubly represented in the higher congresses. The rural soviets were not directly represented in the All-Russian Congress unlike the urban soviets. The urban soviets were also represented in the congress of the region and the province in which the city was located. The object was to favour the urban industrial population which was held to be more loyal to the new government. The All-Russian Congress was the final law-making body and had both legislative and adminis-

[1] In 1925, a number of new republics joined, like Uzbekistan, Turkmenistan, Kazakistan, etc.

trative functions. But, as it was a very large body, it met only twice a year. Between its session power was vested in an executive committee of three hundred members, called Union Central Executive Committee (*Tsik*) which was elected annually and met every four months. The unwieldy nature of the congress made this committee sit all through the year and virtually exercise all the powers of the Congress. This committee was organized into two chambers. The Federal Council represented the four constituent republics on a basis of population. The four republics were: (1) the Ukrainian Socialist Soviet Republic, (2) the White Russian Socialist Soviet Republic, (3) the Trans-Caucasian Socialist Federal Soviet Republic consisting of Azerbaijan, Georgia and Armenia, and (4) the Russian Socialist Federal Soviet Republic consisting of eight autonomous republics and twelve regions. This was the largest of all the four. The other body was the Council of Nationalities which was formed of five representatives each from the allied republics of Bokhara, and Khorezm and the autonomous republics and one delegate from each of the autonomous regions. Laws must be passed by both these chambers. In case of any dispute between both chambers, a joint committee should decide the matter. The Tsik passed the budget and considered all matters of policy. This committee also elected a committee of twenty-one to look after current business. This committee, called the Presidium[1], looked after the good deal of the work. This Presidium passed the laws when the committee was not in session. The Tsik also appointed the Council of the People's Commissars (twelve in number) which corresponded to the Cabinet, and exercised executive powers. One of the Commissars was the President, and except him all the others were heads of departments, like the interior, justice, education, health, agriculture, finance, labour, social welfare, food, inspection of workers and peasants and economic affairs. The powers of the Commissars were checked by the departmental councils made up of the important members of the staff, who could even complain to the Council of People's Commissars. This executive was responsible to the Tsik as well as to the Congress. An inner cabinet developed in this to look after routine matters.

The federal government had wide powers including foreign policy, foreign trade, defence, taxation, currency, railways, posts and telegraphs, labour laws, popular education, settlement of disputes between the units and the federation, exploitation of natural resources, citizenship, civil and criminal law. It had even the right to veto any law of a constituent republic, if it was in conflict with the original agreement for federation. As a result of the vast powers of the federation, a big bureaucracy developed.

Each constituent republic had almost the same form of government, which also was thus complex. The primary unit was the village soviet elected by the peasants of each village, and the town

[1] Seven from the Federal Council, seven from the Council of Nationalities and seven elected by the two bodies in joint session. Four of these twenty-one were the chairmen of the allied republics.

soviet elected by workers in each factory. From these there was a pyramidal scheme of congress of soviets in the district, the county, the region and finally, the republic. Each republic had its own committees and commissars and executive bodies in the local areas.

Representatives were not elected for a term but were subject to "recall". Voting was by show of hands and not ballot. The vote was granted to all persons over eighteen provided they earned their living by productive labour by themselves. Thus, those who employed others, businessmen like traders, those who lived on rents or other form of income and all clergymen were shut out of the franchise. Thus there was set up the dictatorship of the workers. This was defended on the theory that classes expropriated by the Revolution were bound to oppose Socialism and had to be deprived of democratic rights till the state became secure. Hence, there was no universal suffrage. It may also be noted that representation was vocational. The geographical divisions were simply used as the basis of this vocational system. People were grouped according to their employment. Thus a miner in the congress represented, not the city from which he came, but only the group of miners. This system would have developed a narrow and sectional outlook, had it not been for the close Communist oligarchy which dominated all groups. The election was also largely indirect so that the masses had only a loose contact with the government. Further, no organized party, except the Communist party, was allowed. All oppositions were ruthlessly put down. The Communist party was carefully recruited, indoctrinated with party principles which were held with religious zeal, and under stern allegiance to the leaders and discipline like an army. Every member should be an active worker and contribute a part of his income to the party fund. The party organization was modelled on the governmental system. The members must be well versed in the Communist ideology and spread it. They were allowed in 1939 to criticise other members at party meetings. The party was organized on the basis of local party cells in the village, factory or workshop. Once the party policy was decided, no deviation or criticism was allowed.

There was an annual congress of the Communist party which elected the central committee of the party. This central committee elected a body called *Politbureau* which practically exercised supreme power and dictated the policy of the party. The control of the Communist party on the state was ensured by disfranchisement of the propertied classes, greater proportionate representation to cities, use of indirect election, repression of opposition and control of election. Owing to the high power vested in the bureaucracy, the constitution was no real federation, but a bureaucratically centralised state.

Special commissions were also set up to look after various purposes, *e.g.*, the Cheka which looked after the suppression of crimes against the state and enjoyed the power of life and death. It was set up in 1917. Its powers were later limited. But it was

only in 1922 that its powers were transferred to ordinary state agencies. As the whole machinery of government was controlled by the Communist party, no friction could arise amongst these different authorities.

Two sets of courts were established. The People's Courts tried ordinary cases. There was one court for every twenty-five thousand people. The judges were elected by the local soviets and could be "recalled" at any time. The judges were helped by juries chosen by organized groups of workers and peasants. These juries had a share in the decisions to be given. Appeals went to a provincial court chosen by the provincial executive committee. This heard important cases and also supervised the work of the lower courts. As no standard was required of the judges, the judges were often not learned in the law. Owing to the method of choice, their independence also suffered. In each republic there was a supreme court. Besides this, there were also Revolutionary Courts, which exercised jurisdiction over offences against the state. These were set up in the larger cities. All the judges were Communists. Appeals from this court could be taken to a supreme All-Russian Revolutionary Tribunal which was responsible to the central executive committee. A Supreme Court for the whole Union examined the constitutionality of the verdicts of the supreme courts of the different republics, decided legal conflicts between them and heard complaints against the official work of the highest officials of the federation. In each republic, the administration of justice was supervised by a Commissar of Justice who could be appointed and removed by the central executive committee of each republic. But, in the administration of justice, the Russian citizens had no rights against the state. Civil liberty was allowed only in so far as it was not directed against the state. There was constant surveillance of suspects by the police. There could practically be no meeting or processions except those of the Communist party. Even private publications were allowed only under strict control.

Punishments were original and included public censure and work for public benefit. Later on, the prison system was humanised. The term "social defence" was substituted for "punishment". In 1947, capital punishment was abolished. But it was later revived by Stalin.

In 1918, the State included only Russia. But, by 1923, it became a federation including four constituent republics. Though the constitution called itself federal, still, as Carr points out (*The Bolshevik Revolution*), powers were delegated by the centre to the units, and constitutional development consisted only of centralisation. But racial and linguistic freedom was allowed. After the Russian Revolution, the new Russian Government repudiated former Russian imperialism. Subject peoples like the Armenians, the Georgians, and the Tartars of Turkistan were given the status of republics in the state. This Russian federation consisted of four states : (1) The

Russian Republic which included Siberia. (2) The Ukrainian Republic. The south-west of Russia (Ukraine) is inhabited by a people closely akin to the Russians by language and national tradition. This area possesses important agricultural and mineral resources. This was one of the earliest of the groups to assert its independence of the Tsar in 1917. (3) The White Russian Republic. This is immediately north of Ukraine This was set up in May 1919. (4) th Trans-Caucasian Republic. This includes Armenia, Georgia, and Azerbaijan. Here there is large mixture of Tartar and Slav blood. A large part of Armenia had been surrendered to the Turks. Only what remained formed part of this republic.

The government was sincere and well meaning, but had inherited a Russia full of corruption. The enormous bureaucracy often mismanaged things. So urgent things were delayed. Though paid small salaries, the officials lived on a grand scale. Further the change of government in Russia destroyed the link between it and the other European Powers. For three years the soviet government had to fight counter-revolutionary movements which were helped by France, England, Japan and the United States. For these three years these Powers also kept up a blockade against Russia, and carried on propaganda against it.

Russia, after the Revolution, lost much territory. Finland, Estonia, Latvia and Lithuania became independent. Bessarabia went to Rumania and a small area in the Trans-Caucasus to Turkey. The old Russian area of Poland went to Poland. Still Russia was the largest country in the world, occupying a sixth of the surface of the earth. But the Asian part was sparsely peopled. Most of the people were concentrated in the European part, which was the smallest area of the whole state.

Most of the European Powers looked on the state with suspicion, and it was only in 1920 that the blockade imposed by them on Russia was lifted, and treaties were made with her later on. Though Russia finally surmounted these obstacles, the Russian rulers came to be convinced that Russia's recovery from her economic dislocation was not the theoretical question of world Revolution but the revival of the economic life of the hundred and eighty millions of the Russian people. The constitution had nationalised land, forests, canals, livestock, mines, and rivers; but, since the peasants had already seized the lands, the government had to allow them possession. Though the children of the peasant could inherit the land, the peasant could not sell it. The peasant had to sell all surplus harvest over the quantity for the personal use to the state at a fixed price, undertake labour like road-making and contribute a certain amount of work from his animals, *e.g.*, contribution of milk and butter to the state.

Factories were nationalised. All citizens from the age of sixteen to the age of fifty were conscripted for labour. Non-attendance, late-coming and sluggishness were penalised by heavy fines.

Strikes were regarded as political offences. Commissars appointed by the government worked the industries helped by the soviet of workers in each factory. The workers were paid coupons which entitled them to obtain food and supplies from government depots, because all private trade was forbidden. These coupons were given only to those who worked regularly. The supreme economic council which was the most important of the commissariats laid down the plan of the industry, financed the undertaking and controlled the distribution of products. But this kind of regimentation failed. The state farms were a failure. The production of the factories also declined, because the workers were now masters and not amenable to discipline. The Commissars did not have the necessary technical knowledge. The government could not supply enough food. So the workmen were dissatisfied.

So in 1921, a "new economic policy" was begun by Lenin. This was an effort to reconcile the interests of the town and countryside while maintaining the privileges of the workers. This was accepted by the extreme Communist party only after a hard struggle. Trotsky and Zinovieff strongly opposed it.

Under this new policy, the peasants were left free to use the land as they pleased, provided they paid a tax to the state. The peasants of each village were allowed to choose the form of land-holding in the village by a majority vote of those over the age of eighteen. Peasants could trade freely on their produce beyond that which was taken as a tax by the government. Farmers were allowed to employ hired labour. The land was still supposed to be nationalised in theory. As regards industry, the trade unions were no longer allowed to organize and control industries. Industrial organizations were grouped in trusts. Individuals and groups of individuals were allowed to own and operate factories on the condition that the government should have a share in the ownership. Enterprises could be leased on definite conditions to co-operate societies, or companies, private persons, and even foreign capitalists for a period of years. Trade unions were mainly concerned with looking after the interests of the workers. The labour of persons who worked for wages was regulated by a labour code. A new wage system was introduced according to which there was fixed a particular minimum production. On this minimum was calculated the quantity of food and other necessaries for workers. To this was added a money payment corresponding to the skill and importance of the worker. Thus, the original equal scales of wages was displaced by a graded scale of wages.

Mines, several industries, and foreign trade still continued to be a monopoly of the state. Private trade was admitted only as a concession. Shops and stores could be opened only with the license of the government. Of course, if the private entrepreneur showed signs of prosperity, he was heavily taxed to prevent the rise of a new class of bourgeoisie. Co-operative movement was greatly encouraged and played an important part. These were of different kind.

(1) Consumers' Societies which supplied consumers with manufactured goods, or agricultural produce. (2) Agricultural societies. These supplied members with the requisites of agriculture, introduced better methods of agriculture and marketed agricultural produce supplied by the members. (3) Industrial societies supplied the members with the materials and the implements they needed and sold the manufactured products. Thus, the features of the new economic policy were that (1) the peasants were assured that they would not be disturbed in their occupation of land. Instead of taking over the whole surplus produce, the state took a fixed part of the produce. (2) Individuals were allowed to keep small factories in any industry which was not a public monopoly. (3) Industrial enterprises were leased to foreign investors for a period of years. Foreign capitalists were also invited to develop mines, and foreign engineers were employed. (4) Individuals were allowed to carry on retail sale under some restrictions. Private persons were allowed to run stores and shops under government regulation. (5) While the prohibition of strike was maintained and the discipline of the factory was preserved, higher pay was provided for more efficient work. Thus the economic policy was a partial retreat from full Communism till the industrial life of the country could be completely stabilised. But, even now, every able-bodied adult was expected to work in return for his maintenance.

Russia thus established her economic system on a basis of State Socialism. The old Russian aristocracy and the middle classes had been liquidated. Inheritance was not completely abolished as a man was allowed to leave his estate to his direct descendants and to aged dependants ; but it was limited to a small sum. The opposition of the rich peasants (*Kulaks*) to Lenin's policy of forcible collectivisation made him retreat to some extent. While private banking was destroyed and the old agencies of production were taken over by the state, individuals were allowed to own a house. In the village, the individual could have an allotment, three cows and a number of pigs and poultry.

Much was also done for popular welfare. Illiteracy was reduced. For children between the age of three and eight, *creches* and kindergartens were provided. Children were given books, other educational needs and hot lunches. Children's colonies and playgrounds were set up. Education was free. Elementary education was compulsory from the age of eight to fifteen. Besides this, there were home study courses, evening and holiday classes, physical culture centres, travelling libraries and itinerant cheap bookstalls. The language was simplified. Libraries were extended and lectures arranged. The cinema and the radio were used for education. Self-education was encouraged. Co-education was permitted. Technical training was a part of ordinary education. Music schools, art schools and scientific research were organised by the state. But, in education, Communist propaganda was the dominant feature.

The position of women was improved. They could take up any occupation on equal terms of pay with men. They were freed from household drudgery by the provision of public dining halls. Women employed in industry were given free medical attention during pregnancy and leave on full pay for eight weeks preceding and after delivery. Marriage became a civil contract, and any one of the couple could terminate it at will. But, if there were children, the husband had to pay a share of his earnings for their support. Till 1936, abortion was allowed. Later, there was a retreat from this policy. In 1936, abortion became a criminal offence. A decree of 1944 made unregistered marriages illegal. Divorce also was made more costly and it was provided that the hearing in the court would be public. While birth control was encouraged before, now state aid was given to mothers of large families.

Regarding religion, freedom of worship was guaranteed ; but, atheism was encouraged by the state. The church was disestablished and its property was nationalised. Anti-Semitism which flourished in Russia before now disappeared. Later on, there was a retreat here also. In 1945, the government recognised the Greek Orthodox Church which is under a Patriarch. Church Councils now promote liaison between the Church and the government.

Workers were given an interest in carrying out the full industrial programme. The normal working day was to be for eight hours, and there were fixed holidays. The workers were given privileges like cheap rents for houses, free water and lighting and free travel. Every city had a workers' club. The State also fostered the mental development of the workers. Recruitment of labourers was through local branches of the People's Commissariat for labour, which acted as labour exchanges. No labourer could be hired except through these. Social insurance was compulsory. Workers were provided with health resorts and rest homes. Owing to the organization of industry in big national trusts, wages were regulated on a central scale. The trade unions were also allowed to attend to cultural and education work. Disputes between workers and employers were submitted to conciliation boards composed of an equal number of representatives of both sides. Failing agreement, arbitration boards formed in the same way would give the final decision. The supreme economic council continued to control and supervise industry.

Lenin died in 1924, and was followed in power by Stalin. To promote the economic development of Russia, Stalin began in 1928 the first Five Year Plan.

The first Five Year Plan ended in 1932. In spite of many obstacles, much industrialisation was carried out. State farms also increased. Many holdings of peasants were formed also into collective farms (*Kolkhoz*) in which mechanisation of agriculture dominated. The class of prosperous peasants, employing hired labour (*Kulaks*), largely disappeared. In the interests of this plan, Stalin had to take

extreme measures against the *Kulaks* and force peasants to join collective farms. But peasants understood the benefits of large-scale agriculture. The object of the plan also was to increase industrialisation in every branch of production and raising the material and cultural standards of the population. The country's mineral resources were developed. Industrial production surpassed agricultural production. But emphasis was placed on heavy industries. The standard of life of the workers was raised.

In 1933 the second Five Year Plan followed. This was followed by a third Five Year Plan, which lasted from 1938 to 1942. This was interrupted by World War II. The fourth Five Year Plan for 1946-50 was for the rehabilitation of the areas devastated by the war, and lead back production to the level before the war. As a result of these, Russian industrial and agricultural development was greatly increased. New industrial areas were developed in the Ural region, Siberia, and Central Asia, for instance, oil industry in Baku, textile industry in Central Asia etc.

The aim of these plans was to convert Russia from a mainly primary producer to a secondary producer and industrialising the land so that it could become self-sufficing. In the second Five Year Plan, technicians had been mainly foreigners. But technical education also was a part of the plan, and in the third Five Year Plan, trained Russians were prominent. According to the Webbs (*Soviet Communism*), Russia became a land of plenty and collective farms greatly increased production. Russia also became highly industrialised. Dobb (*Soviet Economy and the War*, 1941) estimates that production increased by 185% over that of 1928 by the first two Five Year Plans. But the main emphasis now also was on heavy industry. In the third Five Year Plan, begun in 1939, agriculture became collectivised for the most part. New areas were cultivated in central Siberia. New steel industries were set up in the Urals. Another Five Year Plan is to begin in 1956 in Russia, Hungary and Czechoslovakia.[1]

In 1936, the constitution was revised. A new Constitutional Commission prepared the constitution which was approved by the Soviet Congress, and it forms the present constitution with a few amendments carried out in 1947. It is a lengthy document, having 13 chapters and 146 articles.[2]

Russia is now a multi-national State with sixty different nationalities. In 1939, the units of the federation were eleven. Now they are sixteen.

The constitution is said to be based on the Communist idea of Democratic Centralism in which the various local units enjoy inde-

[1] *Political Quarterly* (Jan.-March, 1952) has a number of articles on the Soviet System. The *Pol. Sc. Quarterly* (Sept. 1931) has an article on the "Planned Economy of Soviet Russia".

[2] See Webbs, *Soviet Communism* for the differences between the 1924 constitution and this. The Webbs regard this as "a new development of the Rights of Man".

pendence in their own affairs and, at the same time, the higher authorities check the actions of the subordinate agencies when necessary.

Of the sixteen units, the Russian Republic is the biggest in size and importance. It is divided into provinces (*oblasts*), autonomous republics and autonomous regions. The latter two represent areas peopled by racial stocks different from the Russians. The Republic extends from the Arctic Ocean to the Crimea. The other units are the Ukraine, White Russia, Georgia, Azerbaijan, Armenia, Kazakstan, Uzbekistan, Turkmenistan, Tajikistan, and Kirghizia. Turkmenistan, Uzbekistan, Tajikistan, Kazakstan and Kirghizia had been originally the Trans-Caucasian Socialist Soviet Federal Republic. In 1939, Russia annexed Eastern Poland which was largely inhabited by the Ukrainians and White Russians. This and Ruthenia[1] were made part of the Ukraine. A part of Finland was conquered in 1940 and was made a new unit called Karelia. The three Baltic states of Estonia, Latvia and Lithuania were also annexed. These three became three separate units. Bessarabia was also occupied and formed into the new unit of Moldavia. Thus the number of units now became sixteen. These units also include autonomous republics, autonomous regions and certain areas called National Districts. In the whole federation, there are sixteen autonomous republics of which twelve are in Russia, two in Georgia, one in Azerbaijan and one in Uzbekistan. Of the nine autonomous regions, six are in Russia. There are ten National Districts on the whole. Outer Mongolia, now called the Mongolian Peoples' Republic, is practically a Russian protectorate and has a constitution on the Soviet model.

The state, which continues to be called the Union of Socialist Soviet Republics, thus continues also to be a federation of a number of units. But, in reality, it actually functions as a highly centralised unitary state. The centre controls foreign policy, admission of new units, changes of boundaries of the units, supervision of the observance of the federal constitution by the units, defence, internal security, foreign trade, industry, agriculture, communications, internal trade, banks, national planning, criminal and civil law, and citizenship. It can also lay down the principles to be followed in the development of material resources, health and education. Article 20 of the constitution declares that, in case of discrepancy between a federal law and a law of the unit, the federal law will prevail.

In 1944, the units were allowed to exchange envoys with foreign states and keep armies of their own and granted the right of secession from the federation. But these independent rights could not be easily exercised and, hence, are not of practical importance. Their grant was simply designed to get them into the U.N.O. as members. The Russian Federation dominates all other units in size, population and influence. An all-Russian outlook is encouraged, and central control over all phases of life is masked under federalism. Each of the

[1] Ruthenia (Sub-Carpathian Russia) was occupied in 194

sixteen units was allowed to set up its foreign and defence ministries only in 1955.

Unlike Switzerland and U.S.A. the Soviet Union is organized on the basis of nationalities and racial cultures. Thus, the constitution provides for absence of discrimination on the ground of race, religion, colour or social origin. Other fundamental rights provide the usual rights with the important exception of there being no natural right to private property. Land, houses, industries, banks, mines and transport are all owned by the state. The law allows only private property in small houses, furniture, savings and articles of personal use, and inheritance of these is permitted. The small private economy of individual peasants and handicraftsmen, based on their own labour and not on the labour of others, is tolerated. It is compulsory for every peasant to do a certain minimum of work prescribed by the state, and compulsory work on the collective farm of the state on a fixed salary. He is not allowed to own land bigger than five acres, or keep more than a cow, two sows and twenty sheep. In 1953, to provide greater incentive to peasants, it was ordered that the peasants should be given some more time for cultivating their private plots.

Article 123 declares the equality of all citizens in all fields, irrespective of nationality or race. But the very first article of the constitution still speaks of "the dictatorship of the proletariat for the purpose of suppressing the bourgeoisie.....and of bringing about Communism under which there will be neither division into classes nor a state power". Hence, in practice, discrimination against non-proletarians is not ruled out.

Article 125 guarantees freedom of speech, of the press, of assembly and of procession. Articles 127 and 128 assure freedom of person and secrecy of correspondence. In practice, the activities of the secret police, press censorship and detention of citizens in labour camps take away many of these rights. There is no real right of association. The press and the radio are under public control. Articles 126 and 141 recognize only the Communist party. Other organizations can only be non-political. The Communist party, not recognized in the previous constitutions, is now officially recognized as a national institution of the state. So the constitution is based on the continuance of the Communist party in power. Article 118 guarantees the right to work and 119 the right to rest. Article 120 assures the right to security in old age and sickness through a scheme of social insurance.

The constitution can be amended by a majority of not less than two-thirds of each of the two chambers of the Supreme Soviet. The old All-Union Congress where city workers got preference is abolished. The two chambers now consist of (1) the Council of the Union, and (2) the Council of Nationalities. The Council of the Union is elected by all citizens aged eighteen or more on a population basis by secret ballot. The basis is one deputy for 300,000 people. Thus, the deputies will be about 600. Candidates are to be nominated not

only by the Communist party, but also by trade unions, co-operative societies and cultural societies. But these are all dominated by the Communists. Still, it is noteworthy that representation has ceased to be vocational only, and has become territorial.

The Council of Nationalities represents the national legislatures of the different units. Each constituent republic sends twenty-five deputies ; each autonomous republic, eleven ; each autonomous region, five and each national district, one. Both Houses are elected for four years and have equal powers. They are together called the Supreme Council. Differences between the two houses are solved by a conciliation commission chosen equally from both houses. They should meet twice a year and not irregularly as before. In the intervals of their session, both houses are represented by a Presidium consisting of sixteen members, one from each unit. This body has assumed powers which the constitution does not contemplate. As the sessions of the Supreme Council are brief and separated by long intervals, the Presidium has virtually become the supreme organization. The Supreme Council does not play any important part. Much of its work consists in the adoption of the reports of the Presidium. The Presidium exercises the power of pardon, appointment and removal of commanders of defence forces, ratification of treaties and interpretation of laws. The top men of the Communist party are naturally the members of the Presidium. The Presidium has even issued decrees, which results in amendment of the constitution like changing the boundaries of units, creating new electoral areas and raising the age of candidates for the Supreme Council.

The executive which is elected by the Supreme Council was called the Council of People's Commissars, consisting of the chairmen of the various departments of the government. In 1946, this council was re-named the Soviet Council of Ministers, and the commissars were re-named ministers. Stalin held office as president of the Council of Ministers, which corresponds to the post of the Prime Minister. As mentioned before, the constitution recognizes only the Communist party. Stalin himself said, "There is no ground in the U.S.S.R. for the existence of several parties. In the U.S.S.R. there is ground for only one party, the Communist party." The party exercises rigorous control on the conduct of the government through the party organs like the Congress of the Union, the Central Committee, the Secretariat, the *Politburo* etc. Stalin himself was the Secretary of the Central Committee of the Communist party. The *Politburo* is the executive and decides policy. It is chosen by the Central Committee. The party consolidates itself by repeated "purges".

Each constituent unit has a unicameral supreme soviet, a presidium and a council of ministers. Autonomous republics have also a similar organization. The province (*oblast*) has the same constitutional status as the autonomous republics. Below is the district (*raion*). The lowest units are the city and the village. All have soviets. The village soviet has been given great powers like

promoting collectivisation of agriculture. While no attempt is made to Russianise the units who are allowed to retain their own cultural traditions, political and economic conditions are common throughout. In theory, local government is autonomous. In practice, it is subject to control from Moscow. But as local government is also in the hands of the Communists, there is no friction. As in all Totalitarian countries, the government provides for the education and indoctrination of Communism in the minds of youths through the organization of the *Comsomol* or the Communist leagues of youth of the union. These have their own libraries and newspapers.

Certain ministers look after matters common to the federation like foreign policy, defence, foreign trade, railways, heavy industry etc. These have subordinate officers of their own in the constituent republics whom they appoint and control. The other ministers deal with matters left to the constituent republics like agriculture, light industry, justice, health, local government etc. These have their counterparts in the constituent units, and their work is more in the nature of co-ordination of work in these spheres. Each minister is helped by a group of advisers. There are also numerous boards like planning boards. In 1955, there were about fifty ministers in different grades. There are fifteen Senior Deputy Prime Ministers and eight Junior Deputy Prime Ministers, who are in charge of various groups of ministers. There is one Prime Minister at the top.

The growth of a bureaucracy of officers, technicians and managers has become conspicuous. It has created social differentiation again. Titles have come back. The old internationalist, egalitarian ideals of Lenin have receded and Russian policy is now nationalistic and imperialistic. While Communists still regard Russia as the spearhead of international Communism and of world progress, others regard her as embodying only an oppressive Totalitarianism inspired by national considerations and using Communists abroad merely as helpers. The following Marxist features, however, still continue—State monopoly of production and distribution, state trading, elimination of the profit motive and control of the community over the Individual[1].

There are three grades of Courts : (1) The People's Courts in every District hear civil and criminal cases of lesser importance. Judges are elected by the people for three years. (2) Regional Courts hear appeals from the above and also hear cases against the government. The judges are elected by the soviets of the region for five years. (3) Each republic has a Supreme Court which hears important

[1] The Webbs (*Soviet Communism*, 1935) pointed out that, unlike the government of the Tsar, there was efficient order and administration Pigou (*Socialism* vs. *Capitalism*) thought that tremendous enthusiasm was created for work amongst the labourers, but he pointed out also that labour unions, while supervising observance of factory legislation and social security schemes, could not control wages and hours. So the workers could not protect themselves from exploitation by the ruling party.

cases and appeals from lower courts. The judges are chosen for five years by the Supreme Council of the Republic. The Supreme Court of the Union consists of numerous judges sitting in three sections—civil, criminal and military. It hears disputes between the units and tries members of the Union Government. It may also give advice regarding constitutionality of laws, but cannot vote any Union law. Judges are chosen by the Supreme Soviet. There are other special courts like Juvenile Courts, Land Courts of Arbitration etc. Though the constitution provides that the judges are to be independent, in practice they are the tools of the Communist party owing to their election and short term of their office. Any judge may also be "recalled" by the body which elected him. Jurors elected by workers sit with the judges.

In 1934, *Ogpu*—the Secret Police Service—was abolished and the Ministry of Internal Affairs now controls the Political Police. This police is now called M V D and is a semi-military service having the character of a secret service. It can send citizens for detention in labour camps without any reference to the courts. It forms also the tool of the ruling faction in the Communist party to put down opposing groups within the party itself.

The First International organized by Karl Marx as an organization of workers, which flourished during 1864-76, was dissolved, as we saw already. In 1889, the Second International was formed with its headquarters at Amsterdam, consisting of representatives from each affiliated country. This formed the Executive Committee of the International Congress which met once in three years. World War I disrupted this. The more conservative elements, meeting at Berne in 1919, reconstructed the Second International. The more extreme elements led by Lenin organized in 1919 the Third International at Moscow. The Second International disintegrated during World War II and was formally dissolved in 1946. The International Socialist Conference which met in 1947 has taken its place and represents only Socialists. The Third International founded the World Federation of Trade Unions, a Communist body. As opposed to this, fifty-three anti-Communist nations formed a new Trade Union International in 1949.

When Lenin set up the Communist International, he contemplated revolution in all countries which would lead to a Communist form of human society. This body, called *Comintern*, was organized on a highly centralised basis. The affiliated national organizations of the different lands had to follow the directions of the Executive Committees which was in Moscow. But gradually the dream of world revolution receded. Stalin, who differed from the view of Trotsky that Communism cannot be possible in one country alone, triumphed over Trotsky. The Comintern was dissolved in 1943 and the Communists of other countries were allowed to function as national groups. Unlike Lenin, Stalin had made use of the *Comintern* to further Russian foreign policy which became gradually nationalistic. In 1947, he revived this again under the new name of the *Cominform*.

The Marxist belief in the dialectic necessity of conflict between Capitalism and Socialism, in the progressive increase of misery of the workers and inevitable supremacy of international proletarian solidarity over national loyalty has been falsified by events. Modern Communism accepts the need of strategic withdrawals and revision of policies according to changing circumstances. Thus, Lenin and Trotsky modified the ideas of Marxism. Dictatorship of the proletariat was extended to include also dictatorship of the peasants. In 1921, Lenin had to allow private capitalism to some extent. Deutscher (*Stalin*, 1949) shows how Stalin also was forced to experiment with alternative policies. In 1924, he gave up the ideal of world revolution for the time being. The idea that the state would wither away in course of time is also tacitly given up. The Marxist principle of "From each according to his ability, to each according to his needs" is changed to the principle "From each according to his ability, to each according to his work". Prof. Fainsod (*How Russia Is Ruled*, 1953) shows that at present "the governing formula of Soviet Totalitarianism rests on a moving equilibrium of alternating phases of repression and relaxation".

Russia has also become imperialistic. After World War II, she controls most of the territories she held before World War I. In Europe, she got the Baltic States, Eastern Poland, North-East Prussia including the port of Koenigsberg, Bessarabia, Bukovina, Ruthenia and parts of Finland. In Asia, she gained Southern Saghalien and the Kurile Islands. China gave her joint ownership of the South Manchurian Railway and the naval base of Port Arthur. Russia controls in practice the governments of Poland, Bulgaria, Hungary, Rumania, Albania, Czechoslovakia, and Eastern Germany. In Asia, she practically controls North Korea and is working in harmony with the Communist government of China. The government of Yugoslavia, originally controlled by Russia, later broke away from this "iron curtain", though Yugoslavia retains its Communist government. Russia also organized *Kartells* to exploit the resources of the East European States. Their trade is also largely diverted to Russia.

Lithuania, immediately to the west of White Russia, became independent after World War I, after a long period of partition between Russia and Germany. The land was separated from Russia by a narrow corridor of Polish territory. Its old capital Vilna, being taken away by Poland, it changed its capital to Kovno. A President, elected for three years by the legislature, was the head of the state. The legislature consisted of a single Chamber elected for three years by proportional representation. The cabinet was responsible to it. There was also provision for initiative and referendum. But parliamentary government failed. During World War II, the land was occupied by Russia. Its population is about two millions.

Estonia is to the north of Lithuania and south of Finland. The Esths, who are akin to the people of Finland, were under Sweden

till 1621 and then came under Russia. After World War I, the land became an independent republic with its capital at Reval. It had a constitution similar to that of Lithuania. But there was no President. All power was exercised by the Prime Minister. A new constitution of 1937 provided for a President who was elected for five years by the people and a bicameral legislature. The President was given great powers and developed into a dictator. The land was annexed by Russia during World War II. The population is over one million. The constitution of 1920 went much further than others in allowing culture councils to look after the culture of the community including education.

Latvia, north-west of Lithuania, is peopled by the Letts (a Slav race akin to the Lithuanians). It became independent of Russia after World War I. It had a constitution similar to that of Lithuania. Here also, owing to factions, parliamentary government failed. The capital was Riga. The land was occupied by Russia during World War II. The population is nearly three millions.

After Russia occupied these Baltic States, complete nationalisation of industry and private enterprise followed, and agriculture was collectivised. We now turn to some other countries which are dominated by the Communists and are virtually "satellites" of Russia.

Poland

Poland once again became an independent country only after World War I. Certain Polish areas were included in the German Empire, certain others in the Russian Empire and some others in Austria. Polish national feeling forced Bismarck to adopt from 1886 the device of buying out Polish landowners in the area of Poland which was in Germany and letting the land to Germans. This colonisation policy failed. Poles multiplied and overflowed even in to the towns. Germanisation failed. In the same way, Polish national feeling gave trouble to Austria and Russia. After it became independent, Poland became the fifth state in Europe in size and population and by 1939 it had a population of thirty-five millions. A Constituent Assembly[1] framed a republican constitution in 1921. The constitution guaranteed various fundamental rights including rights of religious communities and also contained a list of duties of citizens like military service. The constitution was based on the French model. A president was chosen in a joint meeting of the two houses of the legislature for seven years, and was re-eligible for election. Government was by a ministry responsible to the legislature. The legislature was in two houses. The lower house called *Sejam* was elected by universal suffrage by all voters of twenty-on years or more for five years, according to the method of proportional representation. The Senate was elected by the provinces by the same method, the people voting directly; but the voters and the candidates had a higher age limit than

[1] Machray (*Poland 1914-31*) traces the establishment of the republic.

for the lower house, an experiment intended to provide members of a more mature outlook. But the lower house was dominant in power. The constitution could be amended by a two-thirds majority in both chambers on a motion by a quarter of the lower house. A general revision of the constitution every twenty-five years was provided for. For this, the two houses should meet together as a National Assembly and adopt the change by a majority. Following the example of the Weimar Constitution of Germany, a Supreme Economic Council was set up to consider economic affairs. A Supreme National Tribunal headed a hierarchy of lower courts. The country was divided into provinces. Of these, Upper Silesia alone had a Diet and a special government. The Free City of Danzig was included in the customs frontier of Poland, though it had its own independent government under the guarantee of the League of Nations.

But Polish politics suffered from the racial, social and religious differences of the people. Racial minorities gave trouble. Marshall Pilsudski (1867-1935), the first President, kept the state in good order till he retired to private life in 1923. From 1923 to 1926, factious strife and disorder hampered parliamentary government. Multiplicity of parties accentuated petty party differences and personal animosities. J. H. Nicholson (*Remaking of the Nations*) remarks that Poland was a land ever prone to acute dissensions and that the assembly had about twenty-two parties. The constitution broke down, and Pilsudski had to rescue the land from anarchy. He overthrew the government by force and began to rule. Though he disclaimed the title of dictator, his rule was a dictatorship under the form of parliamentary democracy. People, unaccustomed to democracy, obeyed his autocracy, because it kept order. A single party organized by him, called Camp of National Union, or *Ozon*, was supreme. The budget was balanced. Economic prosperity increased. In 1933, corruption which prevailed in the towns was ended by placing them under state control. Machray regards Pilsudski as a great statesman.

In May 1935, Pilsudski died and power passed into the hands of a military government headed by Col. Smigly-Rydz who had been a follower of Pilsudski. In 1935, a new constitution concentrated all power in the hands of the President. He appointed and dismissed the cabinet. The *Sejam* continued with limited powers. It could discuss only certain matters placed before it by the government. Hawgood (*Modern Constitutions*) regards this constitution as keeping Poland "at a middle constitutional way between Fascism and Democracy". When Germany attacked Poland during World War II, the country was conquered and the government collapsed. The Germans governed the land through a governor-general. After liberation, Russian influence established itself and the land became a Communist Republic. Poland was given all German land east of the Oder and western Niese rivers with the exception of certain areas like Koenigsberg which went to Russia. Danzig was occupied by Poland and the German population expelled. But certain Polish

areas with a population of eleven millions went to Russia. As a result, the population of Poland has now gone down to about twenty-four millions. In 1947, an interim constitution gave extensive powers to the government and to a State Council. The Senate was abolished. Land was shared among the peasants and most industries were nationalised.

Czechoslovakia

Czechoslovakia included, when it was formed after World War I, the Czechs of Bohemia, Moravia and Silesia who had been under Austria and the Slovaks of Slovakia who had been under Hungary. The land also included Ruthenia which had been under Hungary. It has rich metallurgical and mining resources. A constitution, influenced by American and French ideas, was framed in 1920. It had a liberal bill of rights. A President was chosen for seven years by a joint session of the Senate and the Chamber of Deputies as in France. The President, however, was not a figure-head. He was entitled to preside over cabinet meetings and take part in them if he wished. He could also send messages to the parliament. The ministry was responsible to parliament. The Chamber of Deputies was elected for six years by voters aged twenty-one or over on the method of proportional representation, but the candidates had to be at least thirty or over in age. The Senate also was elected by the people, but for a term of eight years. The voters had to be twenty-six or over and the candidates forty-five or over. The chamber could throw out the government only by an absolute majority of the total number of members and also of those present. A bill could be returned by the President for reconsideration and could be passed again only by an absolute majority. A bill rejected by the legislature, except one on a constitutional change, could be submitted by the government to a popular referendum. Thus, the control of the legislature over the executive was not so complete as in France. A bill passed by the chamber but opposed by the Senate could become law only if it is passed again by an absolute majority of all the members. Constitutional amendments needed the consent of both houses. The elections were according to the List System. Since no party commanded a majority in parliament, coalitions were the rule. Since all measures had to be agreeable to different parties, there could be no radical change of policy. The most important parties were the Agrarian Party (which was non-Social) the Social Democratic Party and the Communists. The Slovak People's Party stressed the autonomy of Slovakia, though it did not want secession. The Germans and the other racial minorities had their own parties.

The commune was the lowest unit in local government and had its council and mayor. Above it was the district with its assembly. Above it was the "land" administered by committees nominated by the government on the basis of proportional representation. There was a Supreme Court for ordinary cases and a Supreme Court of Administration which dealt with Administrative Law. A Constitu-

tional Court could question the legality of the laws passed by the legislature as in U.S.A.

Masaryk, the first President, nurtured the infant state carefully and was honoured by being elected for life. When he resigned, he was succeeded by his able assistant, Dr. Benes. Masaryk and Benes held office for long terms which made the state stable. Democracy was successfully worked and minorities were treated fairly. Maximum autonomy was granted to Ruthenia which had its own Diet and President.

When Hitler turned against the land, Benes resigned. Dr. Hocha who succeeded him adjourned parliament *sine die*. The state now controlled directly only Bohemia and Moravia and indirectly the autonomous provinces of Slovakia and Ruthenia. The executive was given power to legislate by decree. Shortly after, the land became a German protectorate. Slovakia, which separated, also came under Germany. In 1939, the constitution of Slovakia was changed into an authoritarian one. A President was elected by the parliament for seven years. The parliament consisted of eighty members chosen for five years. But all candidates could be chosen only by the single party which was allowed to function. The President was helped by a State Council consisting of members chosen by him from corporations representing economic, cultural and social interests and the German minority. Jews were dismissed from the army, but were formed into special labour units to render service in public works.

The land was liberated in 1945 after World War II. Benes returned as President. But, as a result of Russian influence, a Communist government was set up. Benes resigned. A constituent Assembly framed a new constitution in 1948, with a President and a unicameral legislature elected for six years. Nationalisation of industry was carried out. Slovakia was given its own national council elected for six years, and is governed by a board of commissioners appointed by the centre. Severe penalties were instituted for those opposing the government. Numerous arrests and detentions in labour camps followed. The government introduced a five-year plan in 1947 to increase output in heavy industries. As the most industrialised of the Russian "satellite" states, she has to supply the needs of the other satellites. The population is now about thirteen millions.

Rumania

Rumania was ruled by a prince of the Hohenzollern dynasty who kept his throne even after World War I which saw the end of the Hohenzollern dynasty. Rumania was now enlarged by the addition of Bessarabia. But, though this area was Rumanian in population, there were large chunks of Ukrainian population in the very heart of the area. Hence this area presented difficulties to Rumania. There were other minorities like the Hungarians, Turks, Bulgars and the Macedonians.

The constitution was revised in 1923 to provide for full democracy. The minister was made responsible to the legislature. A Chamber of Deputies was to be elected by proportional representation for four years. The Senate was to be made up of different elements : (1) Some members elected as for the lower house ; (2) some members elected by colleges of local councillors in each local area ; (3) some elected by functional groups like the universities and chambers of commerce ; (4) High Church officials who sat *ex-officio* ; and (5) former prime ministers and presidents of the assembly. All the members should be over forty. The two houses in joint session decided matters of royal succession. The need for any constitutional change had to be approved by an absolute majority in each house and then decided by a commission of the legislature. Then it had to be passed like any law in the legislature. But this must be followed by fresh elections, and the new legislature had to agree to the change by a two-thirds majority. Thus constitutional amendment was very elaborate. The constitution also tended to centralism, disregarding the feelings of the subject nationalities. Further, though the old electoral system based on a class system, property and education had been altered, the bulk of the people were illiterate persons who were easily managed by party "bosses". The people had no experience of parliamentary government. The great land-owners formed the conservative party which remained in power till World War I. After World War I, the Conservatives fell from power, and their opponents, the liberals, came to power. Land was taken from the nobles and the church, and distributed to the peasants. But the liberals soon became a party of the Right opposed by the National Peasants' party. As in all Balkan countries, political quarrel was acrimonious. Elections were manipulated. Thus, a law of 1926 gave a party which polled more then forty of the total votes, 60% of the seats in parliament. This law hampered any effective opposition and irritated the opposition parties.

In 1937, King Carol II dissolved the parliament and set up his dictatorship. A new constitution was now prepared and approved by plebiscite. The dictatorship of the king was due to the discontent of the subject minorities and the disturbance caused by a Fascist organization called the Iron Guard. In the new constitution, all political parties were dissolved except the Front of National Rebirth formed by the king. All Rumanians, regardless of racial origin, were made equal before the law. No Rumanian could advocate changes in the form of government and distribution of wealth or promote class strife. The members of the Senate were partly nominated by the king and partly elected for life. The Chamber of Deputies was elected for six years by voters of the age of thirty or over who followed any profession or occupation. The king had a suspensive veto on laws.

The Iron Guard leader, who was opposed by the king, was able, however, to set up his dictatorship in 1940, during World War II, with the help of Germany. In 1944, King Michael dismissed this

dictatorship and restored democracy. But anti-monarchical feeling spread in the country. Under Russian influence the land came under Communist control, and the king abdicated in 1947. The 1923 constitution was revived ; but the land became a republic and the legislature was to be of only one house. According to a new constitution of 1948, a Presidium of members elected by the assembly formed the executive. "Purges" and mass arrests got rid of the opposition. Further land was allotted to the peasants and industries were nationalised. Rumania is predominantly agricultural, though she has also large mineral resources including oil. During World War II, Russia occupied Bessarabia and North Bukovina. Rumania had also to cede to Hungary North Transylvania and to Bulgaria South Dobrudja. But, after the war, Rumania got back North Transylvania.

Hungary

Though calling itself a democracy before World War I, it was ruled by great land magnates. After World War I, it lost a third of its territory. Slovakia in the north went to Czechoslovakia, Transylvania to Rumania and Croatia and other areas to Yugoslavia. Thus, like Austria, it became much attenuated. After the partition of Czechoslovakia in 1938-39, Hungary got back parts of Western Czechoslovakia, S. Slovakia and Ruthenia. In 1940, Rumania was forced to return nearly half of Transylvania. After World War II, Hungary recognised the return to Czechoslovakia and Russian-occupied Ruthenia all lands annexed in 1938-39, and the return to Rumania of N. Transylvania. Thus Hungary again became in size the same as after World War I. The population is now about nine millions.

Hungary, after World War I, passed through various political vicissitudes including a Communist dictatorship under Bela Kun who imitated the Russian soviet form of government.[1] Finally, this was overthrown in 1920. A National Assembly proclaimed the state a "Monarchy" with the kingship in abeyance. Hence, a "Regent" was appointed. Horthy was elected regent for life in 1920. The old constitution was adopted with a few changes. Amendment of the constitution was as easy as before. The ministers were responsible to the legislature. The legislature was in two houses. The lower house was elected for a term of five years. The upper house (Table of Magnates) did not function, though it was not abolished. In 1926, it was reconstituted to consist of six groups : (1) Elected representatives of former hereditary magnates, (2) members chosen by local bodies, (3) heads of religious denominations, (4) high dignitaries like judges, (5) men noted in science and commerce, and (6) life members appointed by the head of the state. Electoral corruption was rampant. Racial minorities continued to be repressed.

[1] A good chapter on this is in Graham — *New Governments of Central Europe.*

With the rise of dictatorship in Europe, the Hungarian government also became authoritarian. In 1943, the lower house of parliament was abolished. But after the World War II, Hungary became a republic. Communists got control. Before this, the land was one of big estates and Socialism was sternly repressed. A new constitution of 1949, based on the Russian constitution, declared the land a "People's Republic" and a "state of workers and peasants". The post of President was abolished. A single-chamber parliament is elected every four years by direct and secret vote of persons of eighteen. A Presidium elected by it is to carry on the government. But voters are allowed to vote only for one party and one list of candidates, which is that of the Communists. Factories, co-operative societies, trade unions, and units of the army and the police are allowed to nominate candidates in that list. All citizens are guaranteed equality before the law, and discriminations based on nationality, religion and sex are abolished. The church is separated from the state. Military service is declared a duty of citizens. Natural resources, industries, banks and transport have been nationalised. Collective farms were set up. It was only in 1953 that compulsion of peasants in collectivisation was stopped after the death of Stalin in Russia. The power of the old land magnates was broken. Privately-owned tenement houses were nationalised in 1952. Local prefects and governors are replaced by elected soviets. The Supreme Court is the apex of all courts and its duties include protection of the rights of the workers and punishment of "enemies of the working people".

Bulgaria

Over 80% of the seven million people (since independence, population has doubled) practise agriculture. But rise of population being more than the arable land available, social life is backward. The land is surrounded by hostile neighbours, and, hence, there have been frontier disputes. Minority problem is not so keen, as the Bulgarians are fairly homogeneous. Most of the Greeks were exchanged for Bulgarians by a Greco-Bulgarian convention after World War I.

The Congress of Berlin forced Bulgaria to give up Thrace and Macedonia which she regarded as her dominion. The Balkan Wars led to the loss of all Macedonia to Serbia and Greece and the Dobrudja to Rumania. During World War II, Bulgaria allied herself with Hitler and got S. Dobrudja, part of Thrace from Greece and the Macedonian areas which Serbia had. After this war, Bulgaria had to return the areas secured from Greece and Serbia, but retained S. Dobrudja.

The constitution dates to 1879. It contained many democratic theories. No differences were made on the ground of nationality of citizens in political rights. The constitution at first did not provide for constitutional kingship. The king had the right of refusing consent to bills passed by the legislature. The legislature was in two bodies, both elected by the people. The ordinary Sobranye was

elected for four years (later five years) and was the ordinary legislature. The Great Sobranye was composed of thrice the number of the other, but met only on special occasions for constitutional changes, deciding royal succession etc. For purposes of local government, the land was divided into seven counties, each under a governor. These were divided into districts and municipalities. A Supreme Court of Cessation at Sofia (the capital) and a Supreme Administrative Court were at the apex of a system of courts.

Parties were little more than personal cliques. Personal enmities and desire for spoils corrupted public life. Government officials interfered in elections. There were secret Macedonian organizations indulging in violence. The military also interfered in politics. Politics were stained by assassinations and use of violence to influence votes or put down opposition. The king misused his power to dissolve parliament. He could remove officials at will, including judges.

After World War I, Stambalski, leader of the Peasants' party, set up a dictatorship. He imposed a compulsory labour law enforcing unpaid labour on all for certain days in the year. He dreamed of the unity of all peasants of the world, (the "Green International") and tried as a first step to unite all the agrarian Balkan nations. In 1923, he was overthrown by a conservative movement, and murdered. In 1934-35, a military dictatorship was in power. In 1939, parliamentary government was restored. After World War II, Bulgaria passed under Communist control. A "Fatherland Front" was formed which at first included non-Communists. But these soon disappeared. In 1946, it became a republic. A new constitution of 1947 set up the National Assembly as the supreme power. A single-party *regime* was set up. A Presidium was formed to carry on the government.

Albania

Turkish rule ceased in 1913, and the land became an independent monarchy. Under King Zog, Italy set up her hold by granting loans. Later, Mussolini expelled the king and annexed the land. It was liberated after World War II. The king was dethroned and the land became a republic, Communists seizing power. The population is about one million.

We shall now turn to two independent states which are also Communist. One of these, Yugoslavia, is no longer a Russian "satellite". The other, China, though having close connection with Russia, still pursues an independent policy.

Yugoslovia

Yugoslavia is simply an enlargement of the old kingdom of Serbia which was carried out after World War I. Serbia dates from olden times and had a parliament called *Skupshtina* which also dates from remote times. In 1918, a joint meeting of this body and the Yugoslav National Council sat as a provisional parliament and ratified

the union of the Serbs, Croats and Slovenes into a single state called Yugoslavia under the Serbian royal family. A new constitution of 1921 was based on the old Serbian constitution which, in turn, was based on the English model. The kingdom included Serbia, Montenegro, Croatia, Slovenia, Bosnia, Herzegovina and Dalmatia. The constitution abolished all relics of feudal land tenure and guaranteed the fundamental rights of labour. The legislature, which retained the name of *Skupshtina*, consisted of a single chamber elected for four years by proportional representation. The ministry was responsible to it. The constitution could be amended in two ways : (1) if the proposal was made by the government, it must be submitted to a new legislature ; (2) if the proposal came from the legislature itself, it must be accepted by a two-thirds majority. The assembly was then automatically dissolved, and the proposal must be accepted by the new assembly by a majority. Constitutional changes, questions concerning royal succession and other important matters, it may be noted, had to be dealt with in another way in the old constitution of Serbia. These had to be approved by an enlarged session of the *Skupshtina* composed of twice as many members, called the *Grand Skupshtina.*

There were special Administrative Courts headed by a Council of State formed on the French model. An Industrial Council considered industrial and social legislation. Party struggles hampered the consolidation of the triune kingdom. These parties were also based on racial lines. The over-centralised administration created ill-feeling between the Serbs and the Croats. The cabinets were weak and short lived. Raditch, leader of the Croat Peasants' Party, favoured decentralisation and the conversion of the states into a federation of Serbs, Croats and Slovenes. He visualised this federation as ultimately including all the Balkan nationalities. But he was murdered in 1928 in parliament by a member of the government party. It was after this that the king set up his dictatorship. King Alexander dissolved the parliament in 1929 and abolished the constitution. A cabinet of experts was appointed to run the administration. The laws were codified into a uniform code for the whole state. All parties were dissolved. A common Yugoslav flag was established. Administrative reforms improved the country But the king also tried to suppress the nationalism of the subject races. The heterogeneous population of the state had never been unified before and were discontented with being in a unitary state. A royal decree of 1930 abolished the old historic provinces and created new artificial provinces. In 1931, a new constitution was promulgated. Following the model of Rumania and Czechoslovakia, a bicameral legislature was set up. The Senate was made up of two sections : (1) one half nominated by the king ; (2) one half elected by provincial councils. The Chamber of Deputies, which retained the name of *Skupshtina*, was elected for four years by universal suffrage, but the vote was open and not secret. The voters must be twenty-one or over and should vote only for party lists. The party which secured the largest vote would get two-thirds of the seats in the chamber.

The powers of the king were increased and the ministers were responsible to him. The land was divided into nine new provinces which cut across the old provinces. Each province had a council elected for four years ; but their ordinances had to be approved by the centre. The governors of the provinces (*Bans*) were nominated by the king, and through them also the king controlled the provincial councils. All political, religious and regional associations were banned. The Industrial Council was, however, continued. This constitution maintained the domination of the Serbs, and all the other races remained dissatisfied. King Alexander himself was murdered by a Croatian terrorist. Federalism, which might have been a solution, was never tried. It was only in 1939 that, by a new constitution, Croatia was made an independent province under a Croat Ban.

In World War II, Germany conquered the land and it was partitioned among Italy, Hungary and Bulgaria. But resistance was organized by Marshal Tito. After the country was liberated, a Constituent Assembly, which met in 1945, proclaimed the land a republic and deprived the royal house of all its rights. But under Russian influence, the state became Communist. "Tito", head of the Communist party, became the head of the state. The members of the *Politburo* of the Communist party became the ministers. All industry, banks and transport were nationalised. Private trade was forbidden and all shops were run by the state. Artisans could practise their crafts, but could not employ hired labour. Though collective farms were set up, land was not, however, completely nationalised. Peasants were allowed to keep a surplus for sale in the open market. As in all Communist states, no opposition was allowed and the land became a one-party state. There was a secret police, the *Udba*, to put down opposition. A new constitution of 1946, based on the Russian Constitution of 1936, made the state federal. There was a national assembly of two houses—a Federal Council and a Council of Nationalities. Similar bicameral legislatures functioned in the units of the federation. These provinces were divided into communes. National ownership or control of industry, banking, transport and trade was provided.

Marshal "Tito" continued to maintain private property in land. Women were given equality. Free and compulsory education was provided. A five-year plan was inaugurated for industrialisation. The executive head of the federation was a President and "Tito" was elected to this office.

Later on, in 1948, "Tito" broke away from Russian control and began to pursue an independent foreign policy. After this, police repression became less. Collectivisation of land was slackened and peasant co-operatives were encouraged, though collectivisation, as a long-term goal, is not abandoned. Free market was introduced in internal trade. In the political field, over-centralisation was given up. A new constitution of 1953 provided for a President

elected by parliament for four years. The President who has extensive powers is helped by a Federal Executive Council. The federation[1] consists of six federal republics—Serbia, Croatia, Slovenia, Montenegro, Macedonia and Bosnia and two autonomous provinces. There is a Federal Peoples' Assembly of two houses. The Federal Council is elected by resident voters of the age of eighteen or over by secret and direct vote. Opposition candidates are permitted in elections, provided they have the support of at least a hundred votes in half the communes of their constituencies. A part of the Federal Council consists of deputies from the units (ten delegates from each republic, six from each autonomous province, and four from each autonomous region). Both houses have equal powers. Constitutional changes have to be considered by the deputies of the various units sitting as a Council of Nationalities. The second chamber, called the Council of Producers, is elected by workers and peasants functioning through their workers' councils, co-operatives and similar units. The provinces also have bicameral legislatures as in the centre and are divided into communes which are also self-governing and have similar bicameral legislatures. Everywhere the executive is responsible to the various legislatures which choose them. Thus the Federal Executive Council in the centre is chosen by the lower house. It is not strictly a body of ministers. It is divided into standing committees, each committee looking after a particular function of the government. The federation has no machinery of its own in the provinces. It mainly looked after foreign policy, defence and finance.

To avoid the danger of a bureaucracy, in 1950, the state transferred all factories and enterprises to the independent management of the workers. These workers elect a workers' council which decides all matters concerning the enterprise. This council chooses a managing committee to administer the enterprise It is an interesting experiment in decentralisation.

China

The Emperor of China was despotic. There was an advisory council including the departmental ministers. The empire included Manchuria, Mongolia and Tibet. These were under viceroys, except Mongolia which was under a Mongolian Superintendent stationed at Peking. The power of the viceroys was checked by military governors. European Powers tried to secure "spheres of interest" in China. Finally, sixteen Powers got "concessions" with extra-territorial privileges, as the Chinese government had become weak. By the end of the 19th century, Liberalism infected the educated classes. The emperor made an attempt to satisfy their discontent by setting up a National Assembly in 1910. But it was too late. The Chinese Revolution of 1911 led to the fall of the emperor. China was declared a republic under the inspiration of Dr. Sun Yat-sen. Yuan Shi-kai, who was elected President, exercised dictatorial power and,

[1] The total population is about seventeen millions.

in 1916, proclaimed himself emperor. Rebellions followed till he died in 1917 and the republic was restored. Democracy failed owing to the illiteracy of the people, chronic disorder and the aggressive ambition of Japan which was directed against China. Sun Yat-sen now planned a series of changes to prepare the people for democracy. In 1924, he emphasised Nationalism, Democracy and Livelihood as the "Three Peoples' Principles". The first stressed the past glory of China and the present degradation. The second was directed against autocracy. The third urged state control of food production and distribution, though it was against Marxism. Sun Yat-sen also laid down a programme of stages. The first stage of Military Operation should see the destruction of the old relics of autocracy and feudalism. The second stage of Political Tutelage will be the period when the party set up by Sun Yat-sen called the *Kuomintang* should exercise power and develop economic and social reconstruction. Then will come the final stage of Constitutional Government.

By 1928, the *Kuomintang* considered that the first stage was over, and a constitution, drawn up in 1928, marked the beginning of the second stage. A President helped by a Council of State was given extensive powers. All major appointments were made by the Central Executive Committee of the *Kuomintang* which was elected by its party congress. Governmental activities were divided amongst five *Yuans*. The Executive *Yuan* was the cabinet. The Legislative *Yuan* was the legislature. The Judicial *Yuan* were the Courts. The Examination *Yuan* was a Civil Service Commission to recruit public servants. The Censor *Yuan* had powers of audit and impeachment. Duggan points out (*Factors in the Chinese Situation*) that the *Kuomintag*, like the Fascists and the Bolsheviks, believed that the new government should be for some time a one-party *regime*, modelled on the oligarchic system of old Prussia.

The constitution was revised in 1947 and was held to prelude the beginning of the third stage. It had 175 articles. Power was no longer vested in the *Kuomintang*. All the people were to elect directly by universal suffrage a National Assembly which would sit for six years. The assembly would elect the President of the Republic. The President would hold office for six years and could be re-elected only for one other term. The assembly elected the other chief officers, passed laws and amended the constitution. It could also hold referendum. This formed the Legislative *Yuan*. The President was given great powers. He was in supreme command of the defence forces ; but he could be removed by the assembly. His ministers formed the Executive *Yuan* which was responsible to the legislature. The President of the Executive *Yuan* was the Prime Minister. In case of difference of opinion between the executive and the legislature the executive (with the consent of the President of the Republic) might veto any resolution of the Legislative *Yuan*. If the latter overrode the veto by a two-thirds majority, the executive must either yield or resign. But the members of the assembly were subject to "recall", Article 17 gave the people the rights of "recall",

initiative and referendum. The Judicial *Yuan* consisted of the Supreme Court and Subordinate courts. A Law Codification Commission revised all the laws. The Constitution guaranteed civil liberties and forbade the use of armed forces in politics. While protecting private property, it provided for land reforms. Articles 144 to 169 provided for a plan of social security "to protect the aged, the infirm and the crippled". The Examination and Censor *Yuans* continued. Provinces had unicameral assemblies and governors were directly elected by the people.

This constitution was, however, boycotted by the Communists. After a civil war, the Communists seized power and set up a new People's Government. Mao Tse-Tung, the Communist leader, in his *New Democracy* adapts Marxism to Chinese conditions. According to him, China had been under "bureaucratic capitalism", *i.e.*, certain big families who monopolised state power oppressed the peasants, workers and the smaller middle classes. This should be overthrown by a revolution in which the main motive power would be the peasants led by the working classes.

Till a new constitution was framed, the government was in the hands of a National Committee elected by the People's Political Consultative Conference which met in 1949. This Committee had both legislative and executive functions. A number of non-Communist groups and individuals were associated with the government. These were all opposed to the *Kuomintang*, but the lead was with the Communist party. The lands of landlords and monasteries were distributed to the landless. Later on, this confiscation was limited to affect only "feudal" landlords. Industries were nationalised.

A draft constitution, prepared in 1954 by a committee headed by Mao Tse-Tung, contains 106 Articles. It was ratified by the National People's Congress later and has come into force. The political system is defined as "People's Democratic Dictatorship" based on the alliance of workers and peasants. The constitution is meant to be for a period of transition to Socialism. Hence, right of ownership of lawful income, of housing and savings are protected. Ownership of land and other properties of peasants, handicraftsmen and individual workers is protected ; but these are encouraged to form voluntary co-operatives. Thus agrarian reform is slowed down. Conditions under which capitalism will be allowed to operate in the transitional period are defined. The right of the peasant to the land was protected. But rich peasantry would be gradually eliminated. Handicraftsmen would be allowed to own means of production ; but co-operatives will be encouraged amongst them. The final aim will be to replace capitalist ownership by ownership of the people.

Article 19, while safeguarding civil rights, suppresses "counter-revolutionary" activities. "Feudal landlords" and "Bureaucratic capitalists" are suspended from political rights for a specific period. All nationalities are declared equal and are guaranteed their languages,

customs and religions. The republic is called a "Multinational State".

The highest organ is the National Peoples' Congress elected by provinces, municipalities, national minorities and Chinese residents overseas. Certain members would represent armed forces which are regarded as a distinct part of the community. Of the twelve hundred members one hundred and fifty represent the minority races ; sixty armed services and thirty oversea Chinese. The rest are elected on a territorial basis. Representation is weighted in favour of the urban population against the peasants. The vote is given to all aged eighteen and over. This congress elects the Chairman and Vice-Chairman of the Republic for four years. The Chairman appoints the prime minister and his cabinet which forms the State Council, in accordance with the decisions of the congress. The plenary session of the congress will be held only once a year. Real executive power is vested, therefore, in its standing committee which is permanent. The first All-Chinese Peoples' Congress under this constitution met in 1954.

The number of provinces is twenty-eight including nominally Formosa which is under the control of the *Kuomintang*. The land is divided into six administrative regions—Manchuria, North China, North-West China, East China, South-West China and Central South China. There are also the autonomous regions of Inner Mongolia and Tibet. In 1954, all these were placed under the direct control of the central government. The municipalities of Peking (the capital) Tientsin and Shanghai also passed under central control. Article 2 lays down that "Democratic Centralism" should be the aim. This meant that all organs of state power should be chosen by the people and that all state administrative organs should be controlled by these organs of state power. Thus, there are Peoples' Congresses at every level down to the village. But the government is highly centralised. Even taxation is centralised. National plans cover the whole country. But national minorities as in Tibet, Yunnan and Sinkiang are allowed to use their own languages and follow their own customs.

The judiciary consists of Peoples' Courts headed by a Supreme Peoples' Court. Polygamy has been abolished and freedom of choice has been given to women by the Marriage Law of 1950. The age of marriage for men is fixed at twenty and for women at eighteen, thus ending child marriage. The constitution gives full equality to women including equal divorce and property rights. Before this, only men had the right of divorce and concubinage had been allowed. Education is encouraged ; but Marxism-Leninism dominates it. A Chinese Peoples' University in Peking is run along Marxist-Leninist lines and also teaches Russian. As in all Communist countries, there is a Youth Movement to indoctrinate the people.

Unlike the Russian Revolution, revolution here was not sudden. The Communists came to power after a long struggle of twenty years,

Unlike Russia, peasants were courted, as industrial workers in China were few in number. It was only later on that the Communists proceeded beyond agrarian reform to collectivisation. The merchants and small capitalists are allowed to carry on their occupation, provided this fits into the general scheme of government policy. The Communist government includes men of other parties. Because of its size and importance and its population (which according to the census of 1954 is about 572 millions), China is the first Communist controlled country which can afford to face Russia as an equal. But the support of U.S.A. to the discredited *Kuomintang* government which now lingers only in Formosa has driven China closer to Russia. There are some foreign possessions still left in China. Portugal keeps Macao. Britain has Wei Hai-wei and Hong Kong. The latter had an Executive Council but no Legislative Council. Recently, a Legislative Council representing the people has been set up there. In 1954, Russia made an agreement with China, promising to restore Port Arthur (which she holds) to China in 1955.

CHAPTER VII

SOME OTHER DEMOCRACIES

HOLLAND

HOLLAND was affected by the French Revolution like the other countries. In 1795, France occupied the country and declared it the Batavian Republic under the protection of France. The old constitution was changed and the *Stadtholderate* abolished. Later on, Napoleon converted it into the kingdom of Holland. The land was afterwards annexed to France.

The Congress of Vienna restored the kingdom, but added to it the Austrian Netherlands and some other areas, calling it the kingdom of the United Netherlands. But this union did not work well. The two areas were different in language, religion, political traditions and economic interests. The union was artificial and the preponderance of Holland roused hostility. Finally, the Austrian Netherlands became independent and formed the new kingdom of Belgium. In 1848, the king of Holland was forced to revise his despotism. The kingdom became a constitutional monarchy. The constitution was very lengthy.

The executive is vested in the king. Royal succession and the question of regency are regulated by the constitution in great detail. The king is helped by the Council of State, which consists of distinguished personages, and considers all general administrative questions concerning Holland and her colonies. It also discusses matters to be presented to the legislature.

But the council is only an advisory body. The really important body is the council of Ministers which is, in practice, responsible to the parliament. In spite of the gradual liberalisation of the constitution, the powers of the crown are still great.

The legislature, called the States-General, is composed of two houses.[1] The upper house is elected by the provincial estates for six years, half retiring every three years. The members must be payers of the highest direct taxes, or must have held certain public offices specified by law. The members elected from the estates vary in number according to the provinces.

The lower house, according to a law of 1919, is elected for four years by universal suffrage according to proportional representation. Before this the franchise was based on a property qualification.

The States-General meets in joint session for a number of purposes. Regarding constitutional amendments, the States-General,

[1] The upper house is called here the First Chamber, and the lowe house, the Second Chamber.

under certain conditions, should be dissolved and a new States-General elected on this issue. It could then amend the constitution by a two-thirds majority. The upper house is the weakest second chamber in Europe, as it cannot initiate or amend any law. According to the constitution, new matters concerning royal succession are to be considered, the membership of each house should be doubled.

Besides its legislative functions, the States-General would enquire into the conduct of public affairs by the government.

The High Court of the Hague hears appeals from the lower courts. It also hears complaints brought by the crown or the lower house against ministers, members of the Council of State, high government officials and members of the legislature. There is no trial by jury. There are separate administrative courts. There are also military courts.

Originally, the provinces had been federal units. Though the government became centralised, the autonomy of the provinces had never been completely wiped out. The Dutch constitution elaborately defines not merely central but also local governments. There are eleven provinces, each under a Royal Commissioner. Each province has its Estate consisting of a single chamber elected for six years, half retiring every three years. It elects a permanent committee of six to help the Royal Commissioner to carry on the government of the province. The estate exercises great powers. The provinces are divided into communes which have elected councils. These are presided over by a Burgomaster appointed by the central government, but subject to the provincial committee.

There were originally two principal parties—Liberals and Conservatives. But, later, there developed a Socialist party. Other parties grew up based on Catholic and Protestant religions. After the rise of dictators in Europe, Holland, like the Scandinavian countries, had to pass laws against political factions wearing uniforms (1936). After World War II, the two important parties are the Catholic Peoples' Party which is large, but less conservative than before, and the Labour Party which has replaced the old Social Democratic Party. There are various other groups and the formation of the Cabinet is even now a difficult and complicated procedure.

The currency was bimetallic at first, though it was mainly in silver. In 1847, Holland adopted the gold standard.

During their War of Independence, the Dutch attacked the colonies of Spain and Portugal and carved out a colonial empire. By 1600, they dominated the commerce of the East and were active also in the coast of America and in the West Indies. They begun the experiment of chartered companies which were empowered, not merely to monopolise trade, but occupy land and exercise governmental powers. In the 18th century, Dutch commercial and colonial ascendancy declined. Antiquated regulations hampered trade. The officials became corrupt and their tyranny irritated the natives. Till

the 20th century, Dutch rule was simply exploitation and the Dutch never attended to social services. The naval superiority of England led to the defeat of the Dutch and the loss of many colonies. But, even at the beginning of the 20th century, Holland had a big colonial empire. The most important of this was Indonesia which covers more than 2,000 islands, the chief being Java, Sumatra, Celebes, Borneo and Moluccas. After World War I, Indonesian nationalism began to assert itself. But it triumphed only after World War II. In 1949, Holland agreed to the formation of the separate state called the United States of Indonesia, though the new state was to be linked by a union with Holland under the Dutch Crown. This link was snapped by agreement in 1954. Originally, the new state was a federation with a President elected by the governments of the sixteen federal units. There was a parliament of two houses. The Senate was composed of persons appointed by the federal units from lists of candidates drawn by the assemblies of the units. The National Assembly represented all Indonesia. But, in 1950, federation was abolished. A new constitution divided the land into ten provinces. There are a number of political parties. But the most important are the Masjumi party and the Nationalist party. The total population is about seventy-five millions.

The Dutch possessions in America, consisting of the Dutch West Indies and Dutch Guiana, are to be given self-government within the Dutch Union, but in close association with Holland. A law of 1954 gave absolute equality with Holland to the colonies of Surinam and the Antilles.

BELGIUM

Historically, Belgium is an artificial state created by the treaty of the Powers in 1830 which recognised its independence and guaranteed its neutrality. The population consisted of two races with two distinct languages but, in spite of this, Belgium has developed into a nation.

The constitution, which was framed in 1830 on the model of the French constitutions of 1791 and 1830, have been greatly modified. As in the case of Holland, the constitution is comprehensive in scope. It includes an elaborate bill of rights and a detailed description of national and local governments.

The executive is vested in the king. But the administration is conducted by a ministry responsible to parliament. The royal veto is not used in practice. There is also the stipulation, which is uncommon, that the crown shall have no powers other than those which the constitution grants to it in explicit terms. The Council of Ministers together with some ministers without portfolio form the Council of State. Still, owing to multiplicity of party groups, the king has a wider latitude in the choice of the cabinet than is possible in England. Further, owing to the tense international position after 1936, the king played a more important part in politics than in other lands.

When the World War II broke out, parliament even passed a law giving full power to the king during the period of the war. But Germany overran the land and detained the king. A referendum forced the king to abdicate after the land was liberated, and a Regent exercised royal power till the king's son succeeded to the throne.

The legislature is in two houses. The Senate is formed of three classes of members. One section, equal to half the number in the lower house, is elected just as members to the lower house are elected. But these must have a property qualification. Another section is elected by provincial electoral colleges, as for the Senate of the French Third Republic. These have no property qualification. A section consisting of distinguished citizens is co-opted. The senators must be of the age of forty or over. They are elected for eight years, but half have to retire every four years.

The Chamber of Representatives was elected by universal male suffrage of all over twenty-one for four years, according to the law of 1921, half retiring every two years. It was only in 1948 that the vote was extended to women. Voting is compulsory. The electoral system had before 1921 the following noteworthy features : (1) It embodied a scheme of plural voting. (2) By a law of 1893, every citizen of twenty-one years who was resident in the commune for at least one year was given the vote. (3) Another supplementary vote was given to every citizen over the age of thirty-five who paid a definite household tax and who had a legitimate family. (4) Another supplementary vote was given to every citizen of over twenty one who held real estate of a certain value or income from land of a certain figure. (5) Another supplementary vote could be given to a citizen of over twenty-one who possessed a particular educational qualification. Thus, headship of a family, an educational qualification and possession of property were supplementary qualifications to the vote. But nobody could exercise more than three votes. This plural voting was abolished in 1921.

Another feature is that voting is by a variety of proportional representation adopted since 1899. This variety is the list system designed by D' Hondt of the University of Ghent. The electoral unit is the Arrondissement. The elector receives ballot papers according to the votes which he is entitled to cast. The various parties put up a list of candidates. The voter casts his vote for the lists, each of his vote going to one list. "He does this by pencilling the white spots contained in the black squares, at the head of the lists or against the name of the individual candidates." After this, the seats to be filled are distributed among the parties in proportion to the party's strength as revealed by the votes. This process is illustrated as follows. Supposing four lists of candiates has been presented and let us assume that an aggregate vote of 33,000 is distributed amongst them as follows : The Catholic Party 16,000, the Socialists 9,000, the Liberals 4,500 and the Communists 3,500. Let

us assume that the area is entitled to eight seats. The total number of votes for each list is divided successively by numbers 1, 2, 3, 4 etc., and the results arranged thus :—

	Catholics	*Socialists*	*Liberals*	*Communists*
Divided by 1	16,000	9,000	4,500	3,500
Divided by 2	8,000	4,500	2,250	1,750
Divided by 3	5,333	3,000	1,500	1,166
Divided by 4	4,000	2,250	1,125	875
Divided by 5	3,200	1,800	900	700

Since the number of seats to be filled is eight, the eight highest numbers are arranged in order of magnitude. Thus, these eight numbers would be 16,000 ; 9,000 ; 8,000 ; 5,333 ; 4,500 ; 4,000 ; and 3,500. The lowest, that is 3,500, is taken as the electoral quotient. On this basis, the seats to be filled are distributed among the parties in proportion of the party strength. Thus, the Catholic party will get four seats, its 16,000 votes being divided by 3,500. The Socialist party gets two seats, the Liberals one seat and the Communists one.

A list must be supported by at least 100 voters before being put up before the electorate. The party which presents the lists fixes the order of the names of the candidates. This is not a necessary feature and has been much criticised, because a candidate could be elected over a candidate whose name preceded his only by receiving a larger number of individual preferential votes.

The powers of the legislature are comprehensive. Each house as well as the government can initiate all legislation ; but all laws dealing with finance and the army should be initiated in the lower house. The government can also use its power to dissolve parliament.

As the party composition in both houses is practically the same, there is not much conflict between the two houses. In case of constitutional amendments, as in Holland, when the legislature considers that a particular amendment is desirable, the legislature is automatically dissolved. If the newly-elected legislature approves the change by a two-thirds vote and the king gives his consent, the amendment comes into effect. The question of the constitutionality of the laws is decided by the legislature itself. The legislature has well-organised committees through which the activities of the cabinet are supervised. The lower house can impeach public officials before the Court of Cassation. The presidents of both chambers must be impartial and non partisan.

The legislature is split up into party groups like the Liberals, the Catholics and the Socialists. The Catholics called themselves Christian Socialists from 1936. In 1936 appeared the Rexist party, based on the Fascist model and bent on discrediting parliament and favouring dictatorship. It disappeared. There is also a Communist party.

The courts form a symmetrical hierarchy modelled on the courts created by the Code Napoleon. The highest court is the Court of

Cassation which sits at the capital. Its members are selected by the crown from two lists presented, one by the Senate and the other by the court itself. This system combines the principles of election, nomination and co-operation. This court hears appeals and also tries public officials. In Belgium, there are no administrative courts. The jury system is well established. There are also special military, commercial and labour courts.

The local government follows the common European practice of a combination of locally elected councils which deliberate matters and centrally appointed officials who carry out executive measures. The country is divided into nine provinces. Each province is ruled by a governor-general. Each has an elected council whose life is eight years, half being renewed every four years. This council elects a permanent committee of six to help the governor-general in the government. The lowest unit is the Commune which has an elected council with a term of eight years. There is also a college of aldermen and a Burgomaster appointed by the crown. There is a large measure of local autonomy.

Belgium, the Netherlands (Holland), and Luxembourg entered into a customs union and have a great deal of economic co-operation from 1949. This union came to be known as the Benelux Countries.

Belgium became an important industrial country even in the nineteenth century. French influence during the French Revolution wars broke down mediaeval restrictions like guild rules. The Scheldt, opened for trade by the French, helped her trade, while friendship with England helped the spread of the Industrial Revolution, which found a ready soil in her old, urban life, and was aided by her large coal resources. She, also, developed a colonial empire in Africa.

SWEDEN

It may be noted that in the Middle Ages the four "estates" in the Riksdag had equal voice and vote and so, the "commons" were not important. The modern constitution of Sweden dates from 1809, but has undergone many modifications in the democratic direction. The constitution is very elaborate.

The king rules with the help of the council of State which consists of the ministers and retains the right of decision. One of them chosen by the king as minister of state is the Prime Minister. Responsible government is a convention as royal veto is seldom used.

The legislature (Riksdag) consists of two houses. The Upper House (the "First Chamber") is chosen by the nineteen county councils and town corporations by proportional representation (same method as in Belgium). The members sit for eight years, one-eighth retiring every year.[1] Before 1909, the franchise was undemocratic.

[1] For this purpose, the nineteen districts are in eight groups, and one group chooses one member each year. Candidates must be thirty-five years of age and possess a property qualification.

The electoral reform of 1909 enfranchised all men of twenty-three who had paid taxes. So, vote was still connected with property or income. The bill was attacked by the extreme Right and Left, but was generally welcomed as it embodied manhood suffrage. In 1912, women aged twenty-three were enfranchised. By 1920, universal suffrage was set up. The struggle for the extension of the vote was prolonged. The other house (the "Second Chamber") is elected for four years by proportional representation of all adults aged twenty-three. Voters vote only for the party lists. The Riksdag works through committees. At each session, certain joint committees are chosen by proportional representation. These consider the business to come before the parliament and prepare it. Committees also supervise the work of the government and foreign policy. Relations between the two houses are harmonious. If there is a deadlock on a financial matter, a joint session decides it. The more numerous Second Chamber thus gets a decided voice in finance. Constitutional amendment is easy and frequent. It can be passed by both houses following the next election for the lower house. The king has the right to veto a law passed by parliament. But this power is seldom exercised.

There are Liberal and Conservative Parties (as in Norway) whose programme changed with shifts in public issues. The party of Social Democrats founded in 1889 has also developed in importance and has participated in government. An Agrarian Party was formed in 1913. Since no party could dominate parliament, the government, mostly a coalition, adjusts its policy according to the path of least resistance.

The land is divided into twenty-five counties (*Lan*) each under a Prefect appointed by the crown. Each province has a *landsthing* chosen for four years by proportional representation. Counties are divided into districts (*Landskommuner*) with their councils. Cities have their own councils. The Supreme Court hears appeals and also gives interpretations of laws on application by lower courts or officials. Fundamental rights were guaranteed by the constitution of 1809. But there was no general list, but only a single article guaranteeing all rights. There are also administrative courts.

Sweden has made great advance in social security legislation. Benefits include pensions to old people, children's allowances, medical care etc. The country has rich natural resources and the total population is about seven millions of which 60% is rural. Co-operative movement has much advanced. The state controls hydro-electric power, many railways and telephone, and has a tobacco monopoly. Arneson praises the Swedes as "among the first in the world for their interest in and capacity for efficient administration".

NORWAY

Norway was united for four centuries with Denmark, but had its own government, law and army. The Congress of Vienna in 1815

added the land to Sweden. A national assembly held in 1814 drafted a constitution. Disputes began with Sweden, particularly owing to the divergent interests of the two countries in foreign policy. Further, there were conflicts on economic issues. Norway stood for free trade, but Sweden clung to protection. Ultimately, in 1905, Norway separated from Sweden. A plebiscite elected Prince Karl of Denmark as king. He assumed the name of Haakon VII.

The king is advised by a Council of State. This is the cabinet of ministers which depends on the support of parliament.[1] In powers the king is midway between the king of Sweden and the king of England.

The legislature is called *Storthing* The *Storthing* is elected for four years. In 1901, the vote was extended to all men of 23 and over. In 1907, universal suffrage was set up. Norway was the first country in Europe to give equal rights to women (1913). Election is by proportional representation. The voters are allowed to mark their preferences for candidates in the lists of the parties. The candidates must be 30 or more in age. The legislature is unique in combining the unicameral and bicameral principles. At its first session, the *Storthing* forms itself into two chambers. A quarter of the members is chosen to form the *Lagthing*, the rest form the *Odelsthing*. All bills including constitutional amendments are originated by the latter, but may be returned, but cannot be amended by the former. If they are passed by the lower house and again rejected by the other house, a joint session decides the matter by a two-third vote. Thus, the *Lagthing* acts only as a check. (Prof. Morgenstierne calls the system "a one-chamber system, with some traces of the two-chamber system". It works well.) A bill returned by the king becomes law if it is passed without change by three regular *Storthings* covered after three successive elections and separated from each other by at least two intervening regular sessions. In case of constitutional amendments, they must be approved by two-third majority in the *Storthing*, but after an interval of election between the meetings. The *Storthing* meets in regular session every year without needing any summons by the Crown. The *Storthing* also has the Power of ratifying important agreements with foreign powers. Ministers may be impeached by the *Odelsthing* before a Court of Impeachment formed by members of the *Lagthing* and the Supreme Court.

The Liberal Party had its origin about 1870 to safeguard the liberties of Norway against Swedish high-handedness. The Conservative Party was more favourable to Sweden. After the two lands separated, new issues of social and economic character separate the two parties. The Social Democrats became gradually important. It called itself the Labour Party and formed its first government in 1928. A Socialist government has maintained itself from 1935. There is an Agrarian Party.

[1] Curiously enough, cabinet ministers should not be members of the parliament. Contrast Sweden.

The country is divided into counties (*Fylke*) whose councils are presided over by a *Fylkesmann* nominated by the government. The country is divided into districts (*Herreder*) with their own councils. The towns have their own councils. The lowest are the communes, each with its council. Since 1910 all these councils are chosen by universal suffrage. Local bodies enjoy considerable freedom from central control.

Norway enjoys a modern and humane Penal Code in which prisons are regarded more as reformatories. Fundamental rights are guaranteed by the constitution of 1814. In civil cases, mediation is offered by the court before trial. If these conciliation efforts fail, cases go to civil courts headed by a Supreme Court. There are separate criminal courts, but no Administrative Courts. Lay judges sit with professional judges in certain tribunals.

Norway owns the Spitzbergen Archipelago in the Arctic and certain islands in the Arctic. Along with Sweden, Denmark and Iceland, she has formed the Nordic Union for consultation for common purposes.

DENMARK

Till 1830, Denmark was under despotism, though many of the kings ruled in the interest of the people. Growing democratic movement made the king institute in 1830 four houses (*Land-tags*) consisting of the traditional estates—landowners, peasants and burgesses. In 1849, Frederick VII issued a constitution setting up a bicameral legislature, consisting of the *Landsthing* whose members were nominated and the *Folkething* which was elected. This constitution was revised in 1866. This revised constitution contained a detailed bill of rights. But the executive was not responsible to the legislature. Taxes were also collected without parliamentary consent. The upper house which was filled with propertied interests always opposed the lower house.

The constitution was revised in 1915 and 1920. Even according to this, the king continued to preside over the cabinet which was called the Council of State, and responsible government did not function. But it now functions in practice.

The bicameral legislature continued and was called *Riksdag*. The *Landsthing* had its composition altered. A fifth of it was now elected by all outgoing members of the *Landsthing*. The others were chosen by electoral colleges constituted for the big divisions into which the land was divided. Members held office for eight years, half retiring every four years. The *Folkething* was elected by universal suffrage for four years by voters of the age of twenty-five or over, by proportional representation.[1] Denmark was the first

[1] About three-fourths are elected by P.R. The remaining seats are divided among the parties which had not got sufficient strength. One seat is reserved for Faroe Islands.

country to adopt proportional representation in all elections. In case of deadlocks, the lower house was dissolved and, if the second chamber opposed the law again even after the new *Folkething* had approved it, the *Landsthing* was dissolved. Constitutional amendments must be approved by both houses. These were automatically dissolved and the new *Riksdag* must approve the change. The change was then submitted to a referendum of the voters (who vote for the *Folkething*) and must be approved by a definite portion of this electorate. In 1953, the legislature became unicameral.

The Social Democratic Party (formed in 1878) was able to form a government in 1924, but it was a minority government whose tenure was short. It was only in 1929 that it came to power with a safe majority. There are a number of other parties including Communists. So, the cabinets were usually coalitions.

The kingdom is divided into twenty-two counties, each under a governor helped by a council, There are parish councils and municipal councils. Besides ordinary courts headed by a Supreme Court, there is an Arbitration Court to deal with labour disputes and a special Maritime and Commercial Court and special church and military courts. There is also a Court of Impeachment to try ministers accused by the king or the legislature. Fundamental rights are guaranteed by the constitution.

Iceland was connected to Denmark by a "personal union" from 1918, only the king and foreign policy being common. In 1944, Iceland separated and became a republic. The parliament (*Althing*), after the election, chooses an upper house from itself, a third forming the Upper House and the rest the Lower House. The President is elected by the *Althing* for four years. Denmark possessed some islands in the West Indies which were sold to U.S.A. in 1917. Now they are called Virgin Islands. Greenland is still under Denmark, as also the Faroe Islands.

A new constitution was approved by referendum in 1953. Princesses of the royal family were allowed to inherit the throne. The *Landsthing* (Upper House) is abolished. Greenland is changed from a colony into a province. Voting age is reduced from twenty-five to twenty-three. To counterbalance the abolition of the Upper House, it is provided that, if a third of the parliament or thirty per cent of the electorate demand it, a proposal should be decided by a plebiscite. The constitution for the first time refers explicitly to the working of the parliamentary system.

FINLAND

Finland is further north of the Baltic states. It came under Russia and enjoyed from 1909 to 1917 the status of an autonomous Grand Duchy. In 1917 (December), it declared itself independent of Russia. The principal port and capital is Helsingfors (now called Helsinki). Even while under Russia, it had a representative legis-

lature by a law of 1906. Now, new clauses were added to this law providing for a President chosen for six years by electors elected by the people. The legislature of one house is elected for three years by proportional representation by citizens of over twenty-four. Legislation is complicated. A General Committee elected by the Diet acts as an upper house. An important bill has to be passed by the Diet and repassed by a two-thirds vote by a newly elected Diet. One-third of the deputies can postpone a bill till a new election. As in Sweden, the cabinet is responsible to the head of the state. But responsible government prevails in practice. Still, the President has great power. His vote on bills is absolute. He could dissolve the Diet.

Ordinary courts and administrative courts are headed by a Supreme Court respectively. The country is divided into provinces which are split up into counties. There is a governor in the province and a bailiff for the county. Local government is in the hands of elected councils in municipalities and districts elected for three years.

The principal parties are the Social Democrats and the Agrarian Party. There is a small Swedish People's Party and the Communist organisation called Democratic Union. The strongest of the parties is the Social Democratic Party. Owing to the operation of P. R., numerous parties exist and coalition governments are necessary.

GREECE

Greece won her independence from Turkey in 1829. In 1869, Britain ceded the Ionian Islands to Greece. The Congress of Berlin gave her Thessaly and parts of Epirus. Crete was annexed in 1912. The Balkan Wars gave her S. Macedonia. She expected gains after World War I by the Treaty of Sevres with Turkey, but this treaty never came into effect. In World War II, Greece was conquered by the Germans who gave E. Macedonia and Thrace to Bulgaria. Germany occupied all the Aegean Islands and part of Crete. The rest of Crete and some areas went to Italy, while Albania occupied some areas. Greece was limited to Thessaly and the Peloponnesus. But these losses were restored after the war. Greece got the Dodecanese Islands from Italy. The only Greek territory outside Greece now is Cyprus held by Britain.

The population at the end of the nineteenth century was about two and half millions. In 1940, it had increased to about seven millions. The increase was partly due to Greek refugees transplanted from Asia Minor as the result of agreement with Turkey. The Greek population became, however, more homogeneous. Arable land is limited, because of the hilly terrain.

Between 1821 and now, several constitutions were formed. During the War of Independence, there were four temporary constitutions. Constitutions were usually manipulated by ambitious politicians. Though patriotic, the population was local-minded owing to the mountainous nature of the land leading to isolated valleys.

Personalities dominated parties. Proportional representation, introduced in 1926, increased instability of ministries. Army and Navy interfered in politics.

According to the constitution of 1844, there was a constitutional monarchy ruling with the help of a legislature of two houses. In 1864, the constitution was revised. Responsible government was set up as a convention. The second chamber was abolished. Legislation, before introduction into the Chamber, had to be examined by a commission. Constitutional amendments should be proposed by a two-thirds majority and repassed by the same majority at least one month after. Then, the proposal should be passed into law by a newly-elected chamber.

After a constitutional revision in 1911, in 1924 monarchy was displaced by a republic. The new constitution revived a second chamber. A President was elected by both houses for a term of five years. Both houses were elected by proportional representation. The lower house was to sit for three years. The Senate consisted of members elected by a joint session of the two houses and by electoral colleges as in France. The powers of the President were the same as those of the French President. But the constitution did not end the political turmoil caused by the personal rivalries of the politicians, and the ministries were unstable. In 1925, the land came under a military dictatorship. In 1935, monarchy was restored by a plebiscite. In 1936, a dictatorship on the Fascist model came to power with the king's support. Political parties were abolished. The government ruled by decree. A secret police and press censorship controlled the people. There was a youth movement, as in all Fascist lands. Constitutional government was restored in 1946, and a civil war with the Communists going on from 1944 was suppressed in 1949. But, even now, Greece suffers from a multiplicity of parties. In the elections of 1950, there were more than 50 parties contesting. Greece continues in her 1911 constitution. Woman suffrage was granted in 1952.

Cyprus was annexed by Britain in 1914. In 1925, it was provided with a legislative council with an elected majority. But nationalism demanding union with Greece led to serious disturbances in 1931. The constitution was suspended and the governor took over the government. In 1948, the constitution was restored. But nationalism still gives trouble.

TURKEY

The Turkish Empire before the nineteenth century included all S. E. Europe, S.W. Asia and N. Africa. Many areas were lost to Russia later. Greece and other Balkan states became independent. Britain occupied Cyprus. Russia got the Armenian areas at the eastern end of the Black Sea. Bosnia and Herzegovina went to Austria. Crete went to Greece. France occupied Tunis, and Italy, Tripoli. The Balkan Wars limited European Turkey to E. Thrace. After World War I, Turkey accepted the independence of

Egypt and the Arabs. Now, Turkey retains in Asia only Anatola and in Europe, East Thrace, a small area around Constantinople. According to the 1945 census, the population is about 19 millions; most of them are employed in agriculture.

One of the great difficulties in the past has been that of ethnic minorities. The largest minority now are the Kurds. Exchange of Turks and Greeks after World War I removed the Greek minority. By agreement Greek minorities in Ionia and Turkish minorities in Macedonia were exchanged *en masse*. Though causing much suffering, the exchange solved racial and religious complications.

In 1856, Turkey was admitted into the concert of Europe. Sultan Abdul Hamid II was forced to agree to a constitution in 1876. According to this, a legislature, consisting of a Chamber of Deputies and a Senate appointed for life, was set up. But, this constitution was a dead letter till 1908 when the "Young Turks" limited the Sultan's autocracy. But, even now, the government remained autocratic.

The revolt led by Kemal Pasha secured the fall of the Sultan. In 1923, Turkey became a republic. By the constitution of 1924, authority was vested in a single house—the Grand National Assembly —elected for four years. The assembly consists of citizens of the age of thirty and over, who are elected by all Turkish citizens over the age of eighteen. The assembly has the power of concluding treaties, declaring war, coining money, granting pardon and ratifying capital punishment. The assembly elects the President who must be a member of parliament and who has a term of four years. The President presides over the assembly, but has no power to participate in debates. He can veto the proposals of the assembly; but it can override this veto. The President appoints the council of ministers who are responsible to the legislature. In practice, the President is powerful, as he is the leader of the majority party in the assembly, and so can control it. (Kemal was President till he died in 1938.)

Turkey has the only constitution where the President forms the real executive, masking his power through the cabinet. A Council of State elected by the assembly advises on proposed laws and administrative measures. The constitution can be changed by a two-thirds majority of the Assembly. But there should be no change in the republican form of government.

Fundamental rights are guaranteed to all citizens regardless of race or religion, and primary education made compulsory. Modern judicial methods were adopted and the law became secular. Justices of the Peace form the lowest court. The highest is the Court of Cassation. Hence, other European powers agreed to the abolition of the Capitulations (special privileges) they had in Turkey.

Originally, Kemal allowed only one party, the Republican People's Party founded by him. The voters at the quadrennial elections

approved the candidates selected by this party. Even the governors of the provinces were heads of the local party organisations. Turkey's economy was also controlled by the state. Most branches of industry and agriculture were controlled by trusts owned by the state. Important banks were also controlled. In all this and in the restriction of freedom of expression, Kemal's dictatorship, though benevolent, showed a general similarity to authoritarian *regimes* elsewhere. There was, however, no racialism in Kemal's dictatorship (contrast Hitler). He separated religion and the state, crushing the opposition of the Muslim clergy. He worked quietly behind the scenes. Parliament, though not allowed criticism, was allowed to deliberate. Only a few were executed or exiled. Kemal urged six fundamental principles : (1) Statism (a sort of state socialism). This was later modified by the Democratic party which came into power later ; (2) Republicanism ; (3) Secularism ; (4) Nationalism ; (5) Populism, and (6) Evolutionism.

Local government is well organised. The land is divided into provinces *(Vilayets)* under a *vali* appointed by the government. The province is divided into counties *(Kaza)* under a *Kayamakam* similarly appointed. The county is divided into districts *(Nahiye)* under a *Mudir* appointed by the *Vali*. The *Vali* has a general council to help him, elected by the *Kazas*.

In 1946, opposition parties were allowed to contest elections. Direct universal suffrage replaced the two-stage voting system which prevailed before. By a law of 1950, the electoral unit became the *Vilayet* and most of these units are multi-member constituencies.

After World War II, an opposition party, called the Democratic party, developed. In 1950, the Democratic party succeeded in the elections and its leader, Bayar, was elected President. The Republican party, which was in power from 1923 to 1950, was overthrown. Son of a small landowner and himself a businessman, Bayar believes in free enterprise and full parliamentary and democratic government. For the first time since the abolition of the Khalifate in 1924 and the ban on religious instruction in schools in 1949, Islamic religious instruction was allowed in schools, though it is not compulsory. Both parties agree in foreign policy (alliance with U.S.A., and the Western Powers as against Russia and the Communist Powers). But in internal policy, the Republicans believe in state control of industry, while the Democrats want to encourage private enterprise.

We, now, pass on to certain areas which were formerly under Turkish rule, but which are now independent.

Egypt was originally a province of the Turkish Empire. It came under British control and became a protectorate. In 1922, in the face of Egyptian nationalism, British protectorate was ended. The Constitution of 1923 set up a limited monarchy. It contained a list of fundamental rights. The Cabinet was made responsible to

parliament. The parliament was of two houses. The Senate consisted of members over the age of 40 and had a term of ten years. Of the total, two-fifths were chosen by the king and the rest elected. Half of the Senate was renewed every five years. The Chamber of Deputies was elected by universal male suffrage, and the members must be at least thirty years of age. Both houses had equal powers. The highest court, the Court of Cassation, was set up in 1931. There survived a few courts under *Qadis*. The principal party, the *Wafd*, was founded in 1924 by Zaghlul Pasha. It was opposed by the *Saadist* party set up in 1938. There were a number of other parties. Parliamentary government became discredited by the intrigues of politicians and by the interference of the king. In 1953, Egypt became a republic and a military group took over power. The 1923 constitution was abolished and a temporary constitution was set up to last for three years after which it was declared that the people would draft their own constitution.

Egypt had two points of contention with Britain. One was about the Sudan which is to the south of Egypt. The other was about the region of the Suez Canal where the British kept some forces. Sudan, whose population is about seven and a half millions, was administered from 1899 by a condominium of England and Egypt. This led to friction. Finally, an agreement was made in 1953 according to which, after a period of transition, the Sudanese people would freely decide their future status and government through a Constituent Assembly. Now, the British Governor-General continues. But his powers are limited. There is a bicameral legislature consisting of a Senate and a House of Representatives.

According to the treaty of 1936 made between Egypt and Britain, the defence of the Suez Canal zone was in the hands of Britain. By another agreement between Egypt and Britain in 1954, Britain agreed to evacuate this zone and Egypt undertook to keep the base in efficient order and afford facilities to Britain in case of an armed attack on any member of the Arab League, Turkey or Egypt.

Iraq was a part of the Turkish Empire. At the end of World War I, it became a mandate under Britain. Britain withdrew from actual rule and allowed independence in 1930. A treaty of alliance was made with the king of Iraq by which he had to accept the advice of a British High Commissioner. Capitulations should disappear as soon as a sound legal system was set up. Mutual aid was provided for in case of war. Thus, the mandate ended and Iraq became a member of the League of Nations. By a constitution of 1924, Iraq is under a limited monarchy. The legislature consisted of two houses—an Upper House nominated by the king and a Lower House elected by the people. But, owing to factions, constitutional government remains only on paper. The population is about 48,00,000. Of the Arab states, this population is exceeded only by Egypt which has a population of about 20 millions and Saudi Arabia

which has a population of about six millions. The others have less. Yemen has 4½ millions ; Syria, about 3½ millions ; Lebanon, about 12,00,000 and Jordan, about a million.

Syria was a part of the Turkish Empire and, after World War I, became a mandate of France. France promulgated here a constitution in 1930. Syrian nationalism led to liberation from French control after World War II. A new constitution of 1953 provided for a President elected for four years with power to select the ministers from outside the legislature which consists of a Chamber of Deputies. The constitution thus maintained a balance between the President and the single-chamber legislature. The constitution was thus made similar to that of U. S. A. The President should be a Muslim. Women were given political rights for the first time, and the vote was extended to all Syrians over eighteen. But political conditions have remained unstable from the beginning. As a matter of fact, there was a military dictatorship in 1948 and, in practice, military generals have held power.

Transjordan (now called Jordan) was formerly a part of the Turkish Empire. It became a British mandate at the end of World War I. Britain admitted its independence in 1946 and allied herself with it by treaty. The state is a monarchy.

Aden in the south of Arabia remains a British colony. An Executive Council and a Legislative Council were set up here in 1947.

Palestine, once part of the former Turkish Empire, became a British mandate after World War I (1923). The mandate imposed on Britain the following conditions : (1) Establishment of a Jewish National Home here. Hence, the boundaries were so framed as to correspond to the old, historic boundaries of the Promised Land. But it was also laid down that Jewish immigration should not affect the rights and position of the non-Jewish sections of the population. (2) Protection of the civil and religious rights of all inhabitants. Hence, the official languages were English, Hebrew and Arabic. Besides ordinary courts, there were to be special Muslim, Jewish and Christian religious courts. (3) Abolition of all privileges given to foreigners including capitulations. An efficient judiciary was to be set up. (4) Gradual development of self-government.

A British High Commissioner, helped by an Executive Council, governed the land. But the mandate proved difficult. While the British Foreign Secretary, Balfour, issued a declaration promising a National Home to the Jews (this declaration also professed to safeguard the civil and religious rights of all the inhabitants), the British had also promised independence from Turkish rule to the Arabs. The Arabs rejected the Balfour Declaration. Two-thirds of the population in Palestine were Muslims. The Arabs and also the Christians in Palestine disliked Jewish immigration. A combination of a Jewish National Home and Arab self-government became impossible. Tension between the Arabs and the Jews led to violent

rioting, terrorism and sabotage. Britain appointed several commissions to study the problem. The Peel Commission of 1937 recommended a partition of the land. But no action was taken and the Jews began large-scale illegal immigration. In 1944, the Arab League was formed and carried on agitation. In 1947, Britain referred the question to the U.N.O. and a special committee appointed by the United Nations recommended partition. While the Jews agreed to it, the Arabs opposed it. Britain, declaring that she could not enforce the plan without the approval of both groups, decided to give up the mandate by 1948. War broke out between the Arabs and the Jews who set up in 1948 a new state called Israel on the coast. Finally, the United Nations managed to set up an uneasy truce between the parties.

Israel is a democratic republic with a population of about 16,70,000. The constitution contains elements drawn from those of U.S.A., England, France and Switzerland. The usual bill of civil rights abolishes death penalty, makes Hebrew the official language, and enacts a labour code. A unicameral parliament (*Knesset*) is elected for four years by proportional representation by all voters over eighteen. The President is elected by it for five years and is re-eligible only once. The ministry is responsible to parliament, but the President can dissolve it if no new government can be formed. The legislature has committees on the Continental model. Constitutional changes may be passed by a two-thirds majority, but in two readings, six months apart. Courts may declare laws unconstitutional. Judges are appointed by the President. Religious Courts for the personal law and religious property of Muslims, Jews and Christians (which the mandate inherited from Turkey) continue. Eighty-nine per cent of the people are Jews, and the common language is Hebrew.

JAPAN

Before the modern period, Japan was divided among a large number of feudal chiefs who ruled over their own areas. At the head of the state was the emperor, called by the title of *Mikado*, and believed to be of divine descent. The imperial dynasty was the oldest dynasty in the world and Japanese historians traced it to 600 B.C. But, the country was really ruled by officers called *Shoguns*. The emperor's power was only nominal.

When Japan became modernised, the feudal classes voluntarily surrendered their powers to the emperor, and their local autonomy disappeared. A new constitution was promulgated in 1889 based on a survey of different foreign constitutions. The laws governing the constitution bear the impress of the constitution of the old German Empire. As the constitution was a gift from the emperor, the power of initiating constitutional amendments rested with him.[1]

[1] The sacred character of the emperor was retained. According to Article 4 of the Constitution, sovereignty lay with the emperor.

The change must be adopted by a two-thirds majority in the Diet and two-thirds of the total number of members should be present. The emperor's veto was final in all legislation. The ministers were not responsible to parliament, but only to the emperor. Besides the power to amend or veto the laws passed by the Diet, the emperor had power to issue temporary ordinances. The Diet controlled taxation. But, nearly one-third of the total revenue including several administrative charges were beyond its control. The emperor was also the High Priest of the National Shinto Cult.

The ministry was headed by the prime minister ; but, in special cases, the emperor could be advised by a special council called the Privy Council.[1] In actual practice, the emperor remained in the background, and politics was mainly a struggle for power between the army and the navy The military had more voice in the administration than in any other country.

The Diet consisted of two houses. The House of Peers was composed in part of royal princes and marquises who were over the age of thirty. Counts, viscounts and barons over the age of thirty would elect a certain proportion. Besides this, men over the age of thirty who had rendered distinguished service were nominated by the emperor. Certain representatives who were of the age of thirty and over were elected by those who paid the highest taxes. The elected members sat for seven years and the others for life. A law of 1925 abolished the majority of peers in the upper house and provided for the appointment of a larger number of men, who were experts in particular fields, large tax-payers and businessmen. Still, the house formed a strong conservative factor. It had equal powers with the lower house which extended even to matters of finance. This made it very powerful. The president and vice-president were appointed by the emperor from amongst the members. Items in the budget rejected by the lower house could be restored by the upper house.

The House of Representatives was composed of members who should be of the age of thirty or over and elected by male citizens over the age of twenty-five. The members sat for four years. Cities with a particular population were also allowed to elect members. But, in general, the country was divided into single-member districts for election purposes. Amongst those who could not be elected were priests and students. Elections were, however, meaningless. There was no freedom of the press. Japan could be compared to old Prussia in its militarism, bureaucracy and efficient government. As mentioned already, the cabinet was not responsible to the Diet and changes were dictated by the military. Ministers could speak in either of the chambers. Each house was divided into sections by lot, and the sections chose the standing committees. Discussion was

[1] The Privy Council was the advisory body recognised by the constitution. The ministry was not recognised by law. The ministers were *ex-officio* members of the Privy Council. They were, usually, ten in number.

public, unless the Diet decided against it. The lower house chose three candidates for each of the offices of the president and vice-president of the chamber, and the emperor nominated one of these to these posts. The parliament was divided into many parties which were formed largely on personal grounds. This can be explained as due to the old feudal conception of personal allegiance. The parties had neither proper organization nor stability. In 1940, in imitation of Germany and Italy, Japan turned Fascist. The political parties in the Diet were dissolved, and Japan became a one-party state.

The lowest courts had single judges. Above them were the district courts and above them there were courts of appeal with many divisions, each having a number of judges. Each court had both civil and criminal jurisdiction. Lastly, there was the Supreme Court consisting of many judges. There were also separate administrative courts. The courts had no power to deal with the constitution, as the right of interpreting it belonged only to the emperor.

Local government was based on the model of Prussia. The whole country was divided into prefectures ruled by a governor. He was helped by a prefectural assembly and a prefectural council. The prefectures consisted of municipalities and counties. The municipalities had a mayor, a municipal assembly and a municipal council. The county had a sheriff, a county assembly and county council. The counties consisted of towns and villages which had their own magistrates and assemblies. Japan also ruled over areas like Korea which were placed under semi-military governments.

The Japanese conception of government was based on the principles that society was more important than the individual, that all men were unequal by nature and that reverence was due to the emperor. Progressive government was impossible, not because the country was politically backward, but because the constitution was reactionary.

Besides militarists, there was the control of the great industrial trusts of which the most important was the Zaibatsu which formed a huge financial, commercial and industrial combine. The desire of these "trusts" to grab markets was one of the causes which led to Japanese military aggression. Further, Shintoism was largely responsible for instilling unquestioning submission to the emperor amongst the Japanese people.

After the defeat of Japan in World War II, the U. S. forces which occupied Japan embarked on a policy of re-educating the Japanese to follow the democratic way of life. Long-suffering political prisoners were released. Freedom of speech, press, religion and education were guaranteed. The great industrial "trusts" like the Zaibatsu were broken up. Ultra-nationalist and militarist teaching in schools was replaced by teaching of respect for democracy, international peace and human rights. Shintoism was banned as a state religion.

A new constitution was drawn up in 1947. It declared that sovereignty is vested in the people. The nobility were deprived of their peerages. The constitution has a preamble, 11 chapters and 103 articles. It renounces war. It guarantees civil and political rights to all in chapter III. Women are given equal rights. Article 25 says that "all people shall have the right to maintain the minimum standard of wholesome and cultural living. In all spheres of life, the state shall use its endeavours for the promotion and extension of social welfare and security and of public health." Article 27 lays down that all people have the right to and obligation to work. A state religion is abolished.

Nine out of the seventeen articles relating to the emperor in the old constitution have been scrapped and the remaining eight rewritten. Thus, the words in the old constitution "The Emperor is sacred and inviolable" have been removed. The emperor is described only as "a symbol of the state and of the unity of the people". No act of the government is exercised in his name. The emperor is deprived of all powers in the government, which are transferred to ministers responsible to parliament. The army, navy and air force are practically abolished The occupying Power gradually gave more and more independence to the government and, by 1952, occupation was ended. In 1954, Japan was allowed to have land, sea, and air forces for defence.

As regards parties, the liberal party founded in 1945 was descended from the old Seiyukai party which was dissolved along with other political parties in 1940. This forms an essentially conservative party. The Progressive Party also founded in 1945 was descended from the old Mineseito party[1]. There is really no fundamental difference between these two parties, both being conservatives. Public support was mainly to these two parties. There is also a Socialist party which was split up into a Right and Left wing in 1951. The Communist party was legalised in 1945 when civil rights were given to the people, but it is not powerful.

The Prime Minister is chosen by the Diet and must be a civilian. The Diet consists of two houses. The Second Chamber, the House of Councillors, has replaced the old House of Peers. Members are elected for six years, half being elected at large and half being elected from the prefectural districts. Half the members retire every three years. It has equal powers with the lower house, except in finance and approval of treaties. Deadlocks are solved by a two-thirds vote of the lower house, if the Bill is rejected by the upper house. The lower house, the House of Representatives, is elected for four years by direct universal adult suffrage through single member constituencies. The voters should be over twenty in age. Ultimate power is with it, as the cabinet is responsible to it. Both houses

[1] The other principal party which opposed the Seiyukai. In 1954, it dissolved itself and, with some seceders from the Liberal party, formed itself into the Democratic party.

have a system of Standing Committees. In the old constitution there were only *ad hoc* committees which were powerless. Now, there are twenty-one standing committees for each house, elected according to party strength. There is also a Joint Legislative Committee of both houses to watch over laws and avoid friction between the two houses or between the legislature and the executive in the matter of legislation. Amendment of the constitution, initiated in the Diet, must be passed by a two-thirds vote of all the members. They must then be approved by the people at a special or a general election.

The whole judicial system has been revised. Judges are appointed by the government to the Supreme Court ; but, the nomination must be approved by the people in the general election following their appointment, and this approval is to be repeated every ten years. This seems to be an undesirable application of the principle of "recall". The judges of the lower courts are appointed by the government. The Supreme Court can pronounce on the validity of the acts of the legislature and of the executive. The old secret police is abolished.

Local Government has been democratised. In each prefecture there is an elected assembly. The governor of the prefecture is now elected by the voters. In the same way, the mayors of cities are also elected. Cities and villages have their own councils.

Manchuria and Formosa went back to China. South Saghalien (taken from Russia in 1905) went back to Russia. Korea became independent. Part of the Kuriles went to Russia and the rest to U.S.A. Japan is thus confined to her four chief islands and certain smaller adjoining islands. Her Pacific islands are held by U.S.A. on U.N. trusteeship. The population of eighty-seven millions (according to the census of 1953) is cooped up in 1,45,000 sq. miles. The government has launched a six-year programme to make the land self-sufficing by 1960.

BURMA

Burma was separated from India in 1937. It became independent of British rule in 1948 and decided to become a republic, having a defence agreement with Britain. A Constituent Assembly drafted a new constitution. According to this, the Union of Burma consists of Burma proper and tribal areas like the Shan State, the Karenni State, the Katchin State, and the Karen State. The President is elected by a joint session of parliament and can be re-elected once only. There is no Vice-President. All power is with the cabinet which is responsible to parliament. The parliament consists of two houses. The Chamber of Nationalities is chosen for four years. It consists of representatives of the constituent units. The Chamber of Deputies is directly elected for four years by universal suffrage. Voters have to be over eighteen. The powers of both houses are equal except for the fact that the lower house controls finance and the cabinet. A constitutional amendment has to be approved by

each house and then again approved by a two-thirds majority in a joint sitting of both houses. If it concerns a State, the majority of the members representing the State must form part of this majority.

Distribution of powers within the Union and the units follows generally the model of Canada. There are only two lists—a Union list and a State list. Each State Council consists of representatives of the particular State in the Union Parliament. The representative of the State in the Union Cabinet is the executive of the State. This Head of the State is helped by a cabinet elected by the State Council. Thus, relationship between the units and the centre are closer than in Canada. The constitution is more unitary than federal. The central unit which forms 80% of the total area has no separate regional government, but is administered directly by the Union. The ministers of the Union Cabinet function as heads of the state executives, while the state legislature is a committee of the Union Parliament. There is only one citizenship—that of the Union. There are no State courts. The Shan State and the Karenni State can exercise the right to secede by a two-thirds vote of the State Council followed by a plebiscite, after the first ten years of the Union. Trouble is given by other nationalities like the Karens, to satisfy whom a Karen State within the Union of Burma was inaugurated in 1954.

The Supreme Court is at the head of the other courts. The constitution of 1948 guaranteed fundamental rights. While guaranteeing private property, monopolies were forbidden and expropriation is allowed in public interest, subject to the payment of compensation. The Supreme Court can be moved to enforce fundamental rights. As in the Indian Constitution, there are directive principles of state policy which are recommended for the general guidance of the state, but cannot be enforced in any court of law. The constitution in para 30 lays down that the state is the ultimate owner of all land and has the right to distribute it for collective or co-operative farming. The important fact is that in the total population of about eighteen and a half millions, 70% are engaged in agriculture. The Land Nationalisation Act of 1948 resumed all lands held by non-agriculturists and also land of all agriculturists above a certain ceiling. This was distributed to agriculturists who were formed into co-operatives. Landless agriculturists are to be settled in collective farms to be set up by the state. Unlike China, this land reform has been carried out peacefully and without violence, and provision is made for compensation to the owners.

The most important party is the Anti-Fascist People's Freedom League. During Japanese occupation for three years, this started as a resistance movement against Japan, and has assumed the government after independence. Trouble is given to it by a Communist party.

THAILAND

Thailand was called Siam till 1949. It comprises an area of about 2,00,000 sq. miles. Of its population of over eighteen millions, 80% are employed in agriculture.

Till 1932, there was an absolute monarchy. A new constitution of 1932 set up an Assembly, half of which was nominated by the king and the other half elected for four years. The king was advised by a State Council, a part of which was elected by the assembly. The king must be a Buddhist. But religious toleration was granted to all others. A bill vetoed by the king could be repassed by the assembly within thirty days. A constitutional amendment had to be repassed by the assembly only after a month after it was originally passed and by a three-fourths majority of the total membership. The issue of the constitution did not mean a democratic revolution. Power was simply transferred from the king to a group of army officers who have retained it ever since. In 1947, the constitution was changed. The new constitution included a chapter on directive principles of state policy including co-operation with other nations for world peace, encouragement of private economic enterprise and its co-ordination with public utilities etc. A Privy Council was set up to be appointed by the king whose main function would be to provide for regencies. The assembly was to be elected for five years. Constitutional amendments required a two-thirds majority in the first reading, simple majority in the second and again a two-thirds majority in the third. A constitution tribunal was set up to pronounce on the constitutionality of laws. The state council was renamed council of ministers. This constitution was overthrown in a military *coup* in 1952 which restored the 1932 constitution. A large Malayan population in the south agitated for cultural concessions and the government had to introduce here some concessions relating to language and appointments.

IRAN

Before 1906, an absolute monarchy prevailed. In 1906, a nationalist movement forced Shah Muzaffar-ud-din to grant a National Assembly (*Majlis*). This assembly drafted a constitution on Western lines, and the Shah accepted it in 1907. Shah Mohammed Ali, who succeeded in 1907, agreed to a new and still more advanced constitution ; but soon intrigued for restoring despotism. The country was also threatened by Russian and British ambitions. In 1909, the nationalists managed to depose the Shah and enthroned his son. But the country was still disturbed and unsettled. The Russian Revolution removed the fear of Russian ambition. In 1919, England made an attempt to secure political control by agreement. But the revived Persian parliament refused to accept it. In 1925, Raza Khan seized power, using the *Majlis* to overthrow the old dynasty and set up his dynasty. He modernised Persia which he called Iran and put down disorder. Like Kemal of Turkey, he kindled a fierce Iranian nationalism. Under its influence the Iranian government cancelled

the oil monopoly held by the Anglo-Iranian Oil Company in South Persia and nationalised the oil-fields.

In 1949, the Majlis approved a seven-year plan for the development of Persia. It also sanctioned a new constituent assembly to draft a new constitution. Now, the Shah and his cabinet govern with the help of a legislature of two houses—the Majlis and the Senate. In spite of the existence of a parliament, royal influence is still strong.

Parties are personal cliques rather than popular groups. There is a Communist group called the Tudeh. The population is about eighteen millions.

AFGHANISTAN

The country has now a modern constitution. A senate mostly nominated, consists of members who hold their seats by virtue of their past service to the country. A House of Representatives is elected by adult suffrage by all citizens over the age of twenty. There is no property qualification. But large powers are reserved for the king who can override laws in case of emergency and he alone can make wars or treaties. The population is about 120,00,000.

FURTHER READING

GENERAL

Appadorai	Substance of Politics (7th ed., 1954)
Bhandari	European Political Philosophy.
Bryce	Modern Democracies (2 vols 1923-29). Review by Pollard in E. H. R., July, 1923).
Buell	Democratic Governments in Europe (1937. Deals with Britain, France and Switzerland).
Do.	New Governments in Europe (Rev. ed. 1937. Deals with Italy, Germany, Russia, Poland, Spain and the Balkan states).
Burns, Delisle	Political Ideals (4th ed. 1929).
Catlin	Political Thinkers of Mankind.
Do.	A History of Political Philosophers (1951. From before Plato to after Lenin).
Chase, Valeur and Buell	Democratic Governments of Europe (1935).
Coker	Recent Political Thought (1934).
Cook	A History of Political Philosophy (Extends from Plato to Burke)
Dodd	Modern Constitutions (1909. Texts of Constitutions as in 1908)
Fellmond (ed.)	Post-war Governments in Europe. (1946).
Finer	Theory and Practice of Modern Governments (2 vols. 1932. Deal with England, France, Germany and U.S.A. Review by Barker in The Contemporary Review, March, 1933).
Gettell	History of Political Thought (1932).
Goodnow	Comparative Administrative Law (1903).
Graham	New Governments of Central Europe.
Harris	Local Governments in many Lands.
Hawgood	Modern Constitutions since 1787 (1939).
Headlam and Morley	The New Democratic Constitutions of Europe (1928).
Jenks	The State and the Nation (Rev. ed. 1935. Has a chapter on post-war development. Summarises results of recent research)
Joad	Introduction to Modern Political Theory (1924).
Jones	Masters of Political Thought (2 vols. 1948).
Kapur A.C.	Principles of Political Science (3rd ed. 1954).
Lowell	Governments and Parties in Continental Europe (1919).
Do.	Greater European Governments (2nd ed. 1925. Materials in above brought more up to date).
Masoldon	Studies in Political Philosophy (1952)
Marriott	Mechanism of the Modern State (2 vols. 1927),
McBain and Rogers	New Constitutions of Europe (1922. Texts of Constitutions, including the Law of Papal Guarantees)
Munro	Governments of Europe (5th ed. 1948. Study of Britain, France, Germany, Italy, Russia and Japan).
Do.	Government of European Cities.
Murray	History of Political Science from Plato to the Present !

Newton — Federal and Unified Constitutions (1923, Historical introduction and texts of 28 constitutions).
Ogg — European Governments and Politics (5th ed. 1948).
Ogg and Zink — Modern Foreign Governments (Rev. ed. 1953).
Pattabhi
Sitaramayya, Dr. — Constitutions of the World.
Peaslee — Constitutions of the Nations (3 vols. 1950).
Petrie — History of Government (1929).
Pollock — History of the Science of Politics.
Ram, Dr. V. S. — Comparative Colonial Policy.
Ram and Sharma — Modern Governments (5th ed. 1950).
Roucek — Governments and Politics Abroad (2nd ed. 1948).
Ruthnaswamy — Making of the State.
Sabine — History of Political Theory (1938).
Sharma, B. M. — Federalism in Theory and Practice (2 vols. 1951. Traces from Ancient Greece).
Shotwell — Governments of Continental Europe (1948).
Sidgwick — Development of European Polity (1903).
Siva Rao — Select Constitutions of the World.
Spender, J. A. — Government of Mankind (1938).
Stoke, Schmeider and Hill — The Background of European Governments (3rd ed. 1951).
Strong — Modern Political Constitutions (3rd ed. 1949).
Toynbee — A Study of History (10 vols.).
Venkataraman, T. S. — Constituent Assemblies of the World.
Wheare — Federal Government (3rd ed. 1953).
Wilson — The State (1918).
Zimmern — Modern Political Doctrines (1939. Study from Burke to the present).

PART ONE

CHAPTER I

THE ANCIENT WORLD

Rangaswamy Aiyangar, K. V. — Political Ideals of the East and the West. (Jubilee lectures of the Maharajah's College, Ernakulam, 1939).
Abbott — History and Description of Roman Political Institutions (1901).
Altekar, Dr. — State and Government in Ancient India. (Examines the ancient Indian view of the origin of the state and its functions. Chapter four deals with the relations between the state and its subjects. After dealing with monarchy, chapter six passes on to the republics. Chapter seven, considering the functions of the assembly, rejects Jayaswal's theory of the Paura-Janapada assembly. Chapters eight and nine deal with the central executive; chapters ten and eleven, with provincial and local government; chapter twelve, with finance and chapter thirteen [the last] with inter-state relations).
Aristotle — Politics. Tr. by Barker (1948).
Bandhopadhyaya — Development of Hindu Polity and Political Theories.

Barker	Plato and his Predecessors.
Do.	Church, State and Study (1930. Has an essay on the Roman Empire).
Bonner	Aspects of Athenian Democracy (1933).
Coulanges, de	The Ancient City (1901)
Fowler	The City State of the Greeks and the Romans (1921).
Freeman	Comparative Politics (1874).
Do.	A History of Federal Government (1863. Devoted almost wholly to an analytical exam nation of the Greek leagues. When he wrote, there were only three modern federations—the Netherlands, Switzerland and U. S. A.)
Ghoshal, U.N.	History of Hindu Political Theories (2nd ed.).
Greenidge	A Handbook of Greek Constitutional History (1920).
Do.	Roman Public Life (1922).
Hammond	Political Institutions of the Ancient Greeks (1895).
Jenks	A History of Politics (1901. For early society).
Lowie	Primitive Society (1920).
Maine	Ancient Law (1920).
Do.	Early History of Institutions (1914).
McIlwain	Constitutionalism, Ancient and Modern (1940. Traces from Greece and Rome on the thesis that constitutionalism is the antithesis of arbitrary government).
Morgan	Ancient Society (1907).
Sen	Studies in Hindu Political Thought.
Willoughby	Political Thought of the Ancient World (1903).

CHAPTER II

THE MEDIEVAL WORLD

Barker	Medieval Political Thought.
Bryce	The Holy Roman Empire (1922).
Carlyle and Carlyle	History of Medieval Political Thought in the West (5 vols. 1929. Shows that the conception of absolute monarchy was foreign to medieval thought).
Coulton	Studies in Medieval Thought.
Davis, H.W.C.	Medieval Europe (1926. H.U.L.).
Dante	De Monarchia. (Argues that the authority of the emperor came from God and not from the Pope).
Duffy	Tuscan Republics (S.N.).
Dunning	History of Political Theories Vol. 1 (Ancient and medieval. 1902).
Foster	Masters of Political Thought. (Deals from Plato to Machiavelli).
Gierke	The Political Theory of the middle ages (Tr. by Maitland. 1938).
Ganshof	Feudalism (Tr. by Grierson. 1945. Profound study of its legal aspects from its origin).
Hammond	Outlines of Comparative Politics (1903. For medieval cities).
Harrison, Frederic	Meaning of History. (Includes some essays dealing with medieval topics).

Hearnshaw (ed.)	Social and Political Ideas of some Great Medieval Thinkers (1925. Lectures by experts on different periods and aspects).
Do. (ed.)	Some Great Political Realists of the Christian Era. (Begins with Augustine and ends with Spencer)
Do. (ed.)	Social and Political Ideas of some great Political Idealists of the Christian Era.
Husaini	Arab Administration (1949. 17 chapters).
Janet	History of Politics. (Good account of medieval political thinkers).
Jenks	Law and Politics in the middle ages.
Mcllwain	Medieval Political Thought in the West.
Do.	Growth of Political Thought in the West from the Greeks to the end of the Middle Ages.
Ockham's Political Writings	(6 vols. This English Franciscan questioned the claims of the Pope. Like Marsiglio and Althusius, he urged popular sovereignty. Review History, January, 1941).
Pirenne	Medieval Cities (1925).
Zimmern, Miss	Hanseatic League (S.N.).

CHAPTER III

THE ERA OF ABSOLUTISM

Allen	Political Thought in the Sixteenth Century (1928).
Beloff, Max	The Age of Absolutism, 1660-1815 (1954).
Dunning	History of Political Theories (Vol. II, 1905. Extends from Luther to Montesquieu).
Figgis	The Divine Right of Kings (2nd. ed. 1914).
Gairdner and Spedding	Studies in English History. (Contains a good essay on divine right).
Gierke	Development of Political Theory. (Tr. by Floyd, 1939. Product of laborious research. Extends from the middle ages to the 18th century. Stresses the importance of Althusius).
Gooch	English Democratic Ideas in the seventeenth century (New ed. with appendices by Laski).
Do.	Political Thought in England from Bacon to Halifax (H.U.L.).
Hearnshaw (ed.)	Social and Political Ideas of some great thinkers of the sixteenth and seventeenth centuries (1927. Include studies of Hooker, Grotius and Hobbes. Review in History, Oct., 1927).
Do. (ed.)	Social and Political Ideas of some Great Thinkers of the Renaissance and the Reformation (1925).
Haller	Rise of Puritanism (1938. Shows that John Liliburne carried over the egalitarian ideas of Puritanism to politics).
James	The English Augustans (4 vols. Vol. 1 discusses the philosophies of Hobbes, Locke and Bolingbroke).
Johnson	The age of Enlightened Despots 1660-1789 (10th ed. by Atkinson).
	Journal of Modern History, March, 1929, has a critical study of the literature on Erasmus.
Machiavelli	The Prince (Best ed. is by Burd. Macaulay has an essay on him).

More — Utopia. (Throws much light on the social and political ideas of the period).

Hobbes — The Leviathan. (His view of the state of nature is in ch. 13).

Hooker — Law of Ecclesiastical Polity. (His view of the social contract is in Book 1, Sec. 10).

Sarkar — Mughal Administration (4th ed. 1951. New chapters on the army and navy, and city government and new matter in administration of justice).

Sarma, Sri Ram — Mughal Government and Administration.

idgwick — Development of European Polity (Chapters 24, 25, and 26 useful for social contract theory).

Stephen, Leslie — Hobbes (E.M.L.).

Stephens, Morse — Syllabus of Lectures on Modern European History (lect. 2 is on enlightened despots).

Villari — Life and Times of Machiavelli (2 vols.).

CHAPTER IV

THE AGE OF DEMOCRACY

Adams (ed.) — The Modern State (A symposium. Includes discussion on whether democracy will survive and whether parliamentary government is a failure).

A "Gentleman with a duster" — Howling Mob. (An indictment of democracy).

Allen — Democracy and the Individual (1945).

Angell, Norman — The Public Mind (1927).

Asirvatham — Political Theory (4th ed. 1950. Ch. 15 studies totalitarianism).

Basset — Essentials of Parliamentary Democracy (1935).

Barker — Political Thought in England from 1848 to 1914 (2nd ed. 1948. H.U.L.).

Benes — Democracy of Today and Tomorrow (1940. Traces the evolution of democracy in Europe and its future in six chs.).

Bluntschli — Theory of the State (3rd ed. 1901. Discusses various forms of government).

Bon, Gustave le — The Crowd (1896).

Brailsford — Voltaire (H.U.L.).

Bowle — Western Political Thought (1951).

Do. — Political Thought in the nineteenth century (1954).

Brown, Ivor — The Meaning of Democracy. (Revision of a book published after the First World War and meant to re-examine the basic principle of democracy).

Do. — English Political Theory (1920).

Bryce — Modern Democracies (1929. Vindication of democracy. Good account of second chambers in ch. 54).

Buckle — History of Civilisation in England (Vol. 1 chs. 12-14 give a good account of the philosophical movement of the 18th century).

Burns, Delisle — Democracy (1929).

Burns-Peltason — Government by the people (2nd ed., 1954).

A.J. Carlyle, Dr. — Political Liberty (1940. Traces from the middle ages to the French Revolution and selects Burke, Paine, Rousseau and Condorcet for individual treatment).

Cobban	Dictatorship, its History and Theory (1939).
Dobb	Propaganda (1935).
Dunning	History of Political Theories (Vol. 3 extends from Rousseau to Spencer. 1920).
Fisher	Republican Tradition in Europe.
Do.	Viscount Bryce.
Ford	Representative Government (1924).
Do.	Dictatorship in the Modern World (1935).
Garner	Political Science and Government (1928).
Gooch	Dictatorship in Theory and Practice (1935).
Goodnow	Politics and Administration (1900).
Hattersley	A Short History of Democracy (1930).
Hearnshaw (ed.)	Social and Political Ideas of some great French Thinkers of the age of reason (1930. Starts with a brilliant study of the period by Laski. Hearnshaw deals with Rousseau).
Do. (ed.)	Social and Political Ideas of some Representative Thinkers of the age of reconstruction 1815-65 (1930).
Do. (ed.)	Social and Political Ideas of some Representative Thinkers of the Victorian Age (1923).
Iyer, K.V. Krishnaswami	Single Transferable Vote (1947).
Joad	Principles of Parliamentary Democracy. (Defends Western ideas of democracy against Communist criticism).
Key	Political Parties and Pressure Groups (1947).
Kohn	Revolutions and Dictatorships (1939. A wide range of topics from the French Revolution).
Laski	Studies in Law and Politics. (The first essay—The Age of Reason—is a good summary of French thought in the 18th century).
Do.	Rise of Liberalism.
Do.	Dangers of Obedience. (Contains an essay on Rousseau).
Lecky	Rise and Influence of Rationalism in Europe. (Survey of developments from the 16th century).
Lewis	Use and Abuse of Political Terms.
Lindsay	Essentials of Democracy (2nd. ed. 1935).
Do.	The Modern Democratic State.
Lee-Smith	Second Chambers in Theory and Practice (1930).
Lippmann	Public Opinion (1922).
MacIver	Leviathan and the People (1940. Discusses totalitarianism and democracy).
Mahajan	Recent Political Thought (Rev. by Sethi. 1953).
Mallock	The Limits of pure Democracy (1918).
Marriott	Second Chambers (2nd ed. 1927).
Do.	Dictatorships and Democracy (1937).
Maine	Popular Government (1885).
Maurois	Voltaire.
Mill	Considerations on Representative Government (1875).
Oakeshott	Social and Political Doctrines of Contemporary Europe (1930. Speeches of dictators are included to illustrate totalitarianism).
Ostrogorski	Democracy and Organization of Political Parties (2 vols 1912).
Prasad, Beni	Democratic Process.
Rader	No Compromise (1939. Analyses the history and theory of Fascism and stresses the radical difference in the aims and cultural heritage of democracy and Fascism).

Sait	Democracy (1929).
Samuel, Lord	Democracy, its Failings and Failure (1941. Considers that the alternative to the party system is only the totalitarian state with its denial of liberty).
Sforza, Count	European Dictatorships (1932. Comparative study of Hungary, Yugoslavia, Italy, Poland, Turkey and Spain as in 1932.
Smith	Public Opinion in a Democracy (1942).
Spearman	Modern Dictatorship (1939).
Stephen, Sir James	Liberty, Equality and Fraternity. (Anxious about popular government).
Venkatarangiah	Federalism in Government (1934).
Do.	Fundamental Rights of Man.
Wallace	Wonderful Century (1898).
Wallas, Graham	The Great Society (1914).
Do.	Human Nature in Politics (1920).
Walsh	Feminism (1917).
White	Introduction to the Study of Public Administration (2nd ed. 1939).

CHAPTER V

STATE INTERFERENCE

Asirvatham	A New Social Order.
Do.	Political Theory (1950. Lucid account of Socialism in a note at the end of ch. 9).
Barker	Development of Public Services.
Barkman	A B C of Anarchism (1942).
Binnie	Economic History of Europe. (Extends from 1760 to 1930. Useful for labour and social legislation).
Bogart	Economic History of Europe 1760-1939 (1942).
Brown, Jethro	Austinian Theory of Law (1931).
Burnham	The Managerial Revolution (1943).
Cardozo	The Nature of Judicial Process. (Describes the great changes in the legal view of liberty and property in the latter part of the 19th century).
Cecil, Lord Hugh	Liberty and Authority.
Cole	Guild Socialism Restated (1920).
Do.	Socialism in Evolution (1938).
Do.	Socialist Economics. (Practical steps for ushering in the 'welfare state').
Do.	The Intelligent Man's Guide to the Post-War World.
Do and Clough	Economic History of Europe (1946).
Crossman	Government and the Governed (A history of political ideas and practice).
Comte, Auguste	Principles of Polity (1851-54. Begins the real study of sociology).
Davidson	Political Thought in England from Bentham to Mill (1915. H.U.L.)
Dealey	The State and Government (1921).
Dicey	Law and Public Opinion in England (1914. Has a valuable introduction also).
Duguit	Law in the Modern State (1921).
Dunning	History of Political Theories (Vol. 4. Recent times. 1924. His students, Merriam and Barnes, have written this volume, continuing Dunning's work up to 1922).

Fisher	Commonweal. (A series of studies).
Follett, Miss	The New State (1918. She sums up the merits of Pluralism as against the Monistic theory of the state, but admits that the state is the unifying agency).
Gettell	Political Science (1937).
Gray, Alexander	Socialist Traditions--Moses to Lenin. (A number of studies in the development of Socialist thought).
Harley	Syndicalism (1912).
Hobhouse	Metaphysical Theory of the State. (Attacks the Idealist view of the state).
Hobson	Evolution of Modern Capitalism (1917).
Do.	National Councils and the State (1919).
Hutchins and Harrison	History of Factory Legislation.
Hunt, Carew	Marxism, Past and Present (1954).
Jones, Sir Henry	Principles of Citizenship. (Idealist view).
Kirkup	History of Socialism.
Knowles	Industrial and Commercial Revolutions During the Nineteenth Century (1921).
Krabbe	The Modern Idea of the State (1930).
Kranenburg	Political Theory. (Discussion of various forms of government and the purpose of the state).
Laski	Political Thought in England from Locke to Bentham.
Do.	Karl Marx. (Friendly criticism).
Do.	Problem of Sovereignty (1917).
Do.	Dangers of Obedience and other Essays (1930).
Do.	Studies in Law and Politics. (Essays and addresses. The essay—The State in the New Social order--contains his political creed).
Do.	Liberty in the Modern State (1938)
Do.	The State in Theory and Practice (1935).
Do.	A Grammar of Politics (1948).
Laidler	Socialism in Thought and Action (1930).
Leacock	Elements of Political Science (1933).
Lindsay	Karl Marx's Capital. (Explanation).
Lippmann	The Good Society (1937). Trenchant attack on dictatorship including Russia.
Lord	Principles of Politics (1921).
Macdonald	Socialist Movement (H. U. L. A sound introduction).
Do.	Socialism ; Critical and Constructive (1928).
MacIver	The Modern State (1926).
Markham	A History of Socialism (1931).
Marx, Karl	Das Kapital. (3 vols. Vols. 2 and 3 were published after his death by Engels. Vol. 4 was added by Kautsky in German, but has not yet been translated into English).
Do. and Engels	The Communist Manifesto (1848).
Maxey	Political Philosophy.
McKechnie	The State and the Individual (1896).
Mill	On Liberty (1880).
Morris	History of Political Ideas.
Pigou	Socialism and Capitalism (1937).
Pipkin	Social Politics and Modern Democracies. (Historical description of social and industrial legislation with special emphasis on the growth of labour organisation. Vol. 1 deals with England and vol. 2 with France).
Robson	Social Security (2nd ed. 1945).
Russell, Bertrand	Roads to Freedom (1920).
Do.	Power (5th ed. 1946).

Seeley	Introduction to Political Science. (Lecs. 5 and 6 deal with individual rights and duties).
Sen, Dr.	The Political Thought of Tagore.
Shadwell	The Socialist Movement 1824-1924. (Critical).
Shaw, Bernard	Intelligent Woman's Guide to Socialism, Capitalism, Sovietism and Fascism.
Sherrington	A Hundred Years of Inland Transportation 1830-1933 (1934).
Sidgewick	Elements of Politics (1908. A good exposition of individualism).
Sirkar Benoy Kumar	Political Philosophers since 1905.
Spingler	Outlines of Political Thought since the French Revolution
Tawney	Equality (1931).
Do.	Acquisitive Society (1943).
Wallas, Graham	Men and Ideas. (The last book written before his death. Part 1 deals with Bentham, Owen and Ruskin ; part 2, with Darwin, Socialism etc. ; part 3 analyses educational problems).
Ward	Sovereignty (1928).
Webbs	History of Trade Unionism (Rev. ed. 1920. Traces both industrial and political growth).
Wells, H. G.	New World for Old. (A persuasive exposition of the principles of Socialism).
Whittaker	A History of Economic Ideas (1940).
Willoughby	An Examination of the Nature of the State (1922)
Do.	The Ethical Basis of Political Authority (1930).
Wotton	Freedom Under Planning (1945).
Wright	Population (1923).

CHAPTER VI

NATIONALISM AND INTERNATIONALISM

Angell, Norman	The Great Illusion (1913).
Asirvatham, Dr.	Forces in Modern Politics. (Study of nationalism, internationalism and imperialism).
Baker	League of Nations at Work (1926. Description of its work).
Bentwich and Martin	A Commentary on the Charter of the United Nations Organisation (1950. The authors do not hide their disappointment that the high hopes held out at the beginning have not been realised)
Brailsford	League of Nations.
Briggs	The Law of Nations (1938).
Brown	International Society (1923).
Bryce	International Relations (1922).
Buell	International Relations (1925).
Burns, Delisle	A Short History of International Intercourse. (Begins from the Dark Ages. Eulogises the League of Nations).
Do.	World of States.
Carr	Twenty Years' Crisis (1940).
Do.	International Relations between the two World Wars (1952. Appendices contain the Monroe Doctrine, Wilson's 14 points, and extracts from the covenant of the League of Nations).
Do.	Nationalism and after (1953).

Fisher	Commonweal. (A series of studies).
Follett, Miss	The New State (1918. She sums up the merits of Pluralism as against the Monistic theory of the state, but admits that the state is the unifying agency).
Gettell	Political Science (1937).
Gray, Alexander	Socialist Traditions--Moses to Lenin. (A number of studies in the development of Socialist thought).
Harley	Syndicalism (1912).
Hobhouse	Metaphysical Theory of the State. (Attacks the Idealist view of the state).
Hobson	Evolution of Modern Capitalism (1917).
Do.	National Councils and the State (1919).
Hutchins and Harrison	History of Factory Legislation.
Hunt, Carew	Marxism, Past and Present (1954).
Jones, Sir Henry	Principles of Citizenship. (Idealist view).
Kirkup	History of Socialism.
Knowles	Industrial and Commercial Revolutions During the Nineteenth Century (1921).
Krabbe	The Modern Idea of the State (1930).
Kranenburg	Political Theory. (Discussion of various forms of government and the purpose of the state).
Laski	Political Thought in England from Locke to Bentham.
Do.	Karl Marx. (Friendly criticism).
Do.	Problem of Sovereignty (1917).
Do.	Dangers of Obedience and other Essays (1930).
Do.	Studies in Law and Politics. (Essays and addresses. The essay—The State in the New Social order—contains his political creed).
Do.	Liberty in the Modern State (1938)
Do.	The State in Theory and Practice (1935).
Do.	A Grammar of Politics (1948).
Laidler	Socialism in Thought and Action (1930).
Leacock	Elements of Political Science (1933).
Lindsay	Karl Marx's Capital. (Explanation).
Lippmann	The Good Society (1937). Trenchant attack on dictatorship including Russia.
Lord	Principles of Politics (1921).
Macdonald	Socialist Movement (H. U. L. A sound introduction).
Do.	Socialism ; Critical and Constructive (1928).
MacIver	The Modern State (1926).
Markham	A History of Socialism (1931).
Marx, Karl	Das Kapital. (3 vols. Vols. 2 and 3 were published after his death by Engels. Vol. 4 was added by Kautsky in German, but has not yet been translated into English).
Do. and Engels	The Communist Manifesto (1848).
Maxey	Political Philosophy.
McKechnie	The State and the Individual (1896).
Mill	On Liberty (1880).
Morris	History of Political Ideas.
Pigou	Socialism and Capitalism (1937).
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CHAPTER VI

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Angell, Norman	The Great Illusion (1913).
Asirvatham, Dr.	Forces in Modern Politics. (Study of nationalism, internationalism and imperialism).
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Do.	International Relations between the two World Wars (1952. Appendices contain the Monroe Doctrine, Wilson's 14 points, and extracts from the covenant of the League of Nations).
Do.	Nationalism and after (1953).

Cobban	National Selfdetermination (1945).
Cohen	Principles of World Citizenship (1954).
Cromer, Lord	Ancient and Modern Imperialism. (Apology for imperialism)
Curtis, Lionel	The Way to Peace (1945).
Do.	Civitas Dei (2nd ed. 1953).
Dikshitar, V. R. R.	War in Ancient India (2nd ed.).
Dolivet	The United Nations (1948).
Earle	Nationalism and Internationalism (1950).
Einzig	World Finance since 1914.
Do.	War Finance 1914-35 (1935).
Do.	Do. 1935-37.
Do.	Do. 1937-38.
Fenwick	International Law (1924).
Friedmann	An Introduction to World Politics (2nd ed. 1952. Contains texts of the U. N. Charter, NATO, Schumann plan, and Anzus pact).
Garner	Recent Developments in International Law (1925).
Garnett	A Lasting Peace (1939).
Do.	UNESCO.
Gathorne-Hardy	A Short History of International Affairs 1920-38. (Is divided into three parts: 1920-25 Settlement, 1925-30 Fulfilment and 1930-38 Collapse).
Geldston	Progress in Medicine (1940).
Gooch and Masterman	A Century of British Foreign Policy (1917).
Gooch	Nationalism (1920).
Greaves	Federal Union in Practice (1940).
Gregory	Tariffs (1921).
Hall	Treatise on International Law (8th ed.).
Hartz	Nationality in History and Politics (1944).
Heaton	Economic History of Europe.
Hobson	Towards International Covenant (1915).
Do.	Imperialism (1938. Strong condemnation. Discusses its motives and bad effects on backward peoples).
Hudson	The Permanent Court of International Justice (1925).
Do.	Progress in International Organisation (1932).
Jennings	Federation of Western Europe (1940).
Joad	Philosophy of Federal Union.
Keeton and Schwarzenberger	Making International Law Work (1939).
Kircaldy and Evans	History and Economics of Transport.
Lawrence	Principles of International Law (7th ed. Rev. by Dr. Winfield. 1931).
League of Nations (ed.)	Commercial Banks 1925-33. (A study of banking in 40 countries).
Levi, Werner	Fundamentals of World Organisation (1950. Analysis of obstacles to international co-operation).
Marriott	Commonwealth or Anarchy ? (1940. Survey of projects of peace from the 16th century).
Medlicott	British Foreign Policy since Versailles—1919-1939 (1940. Discusses the peace settlement and British policy up to 1939).
Moon	Imperialism and World-Politics (1926).
Morley	Society of Nations. (Traces the origin and growth of the League of Nations, which he regarded as a confederation growing into a superstate).

Morse and MacNair	Far Eastern International Relations (1931).
Mower	International Government (1931).
Muir, Ramsay	Nationalism and Internationalism (1919).
Murray, Gilbert	The League of Nations and the Democratic Ideal. (Argued that the League rested on the principles of reasoning and persuasion).
Do.	From the League to U.N. (1948).
Nicholson	Diplomacy (H.U.L. 2nd ed).
Ogg and Sharp	Economic Development of Modern Europe (Rev. ed. 1920).
Oppenheimer	International Law (2 vols. Ed. by Dr. MacNair).
Page	War, its Causes, Consequences and Cure (1923).
Palmer and Perkins	International Relations (1954).
Perigord	The International Labour Organisation (1926).
Price, John	International Labour Movement. (Study of the movement between the two world wars).
Reinsch	World Politics at the end of the nineteenth century (1900).
Do.	Public International Unions.
Rose, Holland	Development of Modern Nations (1926. Contrasts British and German imperialism).
Do.	Nationality in Modern History (1916).
Royal Institute of International Affairs (ed.)	Nationalism (1939).
Sastri, K R.R.	International Law.
Schwarzenberger	Power Politics (Rev. ed. 1951. Surveys relations of states, the League of Nations, the U.N.O. and regional pacts).
Sen	International Law (1950).
Seton-Watson	Britain in Europe 1789-1914 (1937).
Do	Britain and the Dictators (1939).
Strusz, Hupe and Possony.	International Relations (2nd ed. 1954. Deals topically with the conflict with the dictators).
Streit	Union Now (1939).
Sweetser	The League of Nations at work (1920).
Toynbee and others	Survey of International Affairs. (Comes from 1920 to 1948, except for the period 1933-35).
United Nations (ed.)	Year Book 1946-47. (Deals with the Atlantic Charter, Moscow Declaration, Yalta Agreement and Dumbarton Oaks Proposals. Describes the machinery and work of all U.N.O. institutions).
Wharton	Elements of International Law (2 vols. Revised by Keith).
Woolf	International Government (1916).
Do.	Economic Imperialism (1920).
Do.	Imperialism and Civilisation (1928).
Wright (ed.)	The World Community (1948)
Young	Diplomacy, Old and New (1921).
Zimmern	Nationality and Government (1918).

PART TWO

CHAPTER I

BRITAIN

Anson	Law and Custom of the Constitution (Vol. 1, fifth ed. 1935. Vol. 2, fourth ed. 1922.)
Beveridge	Full Employment in a Free Society (1944).
Brogan	The English People (1943).
Cole	Introduction to Trade Unionism. (Contains details regarding British Trade Unions).

Dicey	Introduction to the study of the Law of the Constitution (9th ed. 1939).
Fay	Co-operation at home and abroad (Rev. ed. 1936. Compares Britain and the Continent).
Finer	British Civil Service.
Graham	English Political Philosophy.
Greaves	The British Constitution (1938).
Ilbert	Parliament (3rd ed. 1948).
Jennings	Cabinet Government (2nd ed. 1951).
Do.	Parliament (1939).
Laski	Parliamentary Government in England (1938).
Lowell	Government of England (2 Vols. New ed. 1920).
Marriott	English Political Institutions (4th ed. 1938).
Murray	Studies in the English Social and Political Thinkers of the nineteenth century (2 Vols.).
Morrison	Government and Parliament (1954).
Ogg	English Government and Politics (2nd ed. 1936).
Rayner	British Democracy. (Compares with the United States and Russia),
Rockow	Contemporary Political thought in England. (Discusses the views of Bertrand Russel, Laski, the Pauls, Hobhouse, Bryce, Cole, Norman Angell, Ramsay Macdonald etc.).

CHAPTER II

INDIA

Anstey, Dr.	Economic Development of India (1936).
Appadorai, Dr.	Dyarchy in Practice (1948).
Archbold	Outlines of Indian Constitutional History. (No discussion of politics. Good description of judiciary.)
Asirvatham, Dr.	Future Constitution of India. (Sums up the defects of the Act of 1935, Cripps Proposals, Coupland Scheme etc.)
Banerjee, Dr. A.C. (ed.)	The making of the Indian Constitution (2 vols. Traces from 1939 to 1947. Vol. 1 collects documents, including unofficial ones. Vol. 2 is a historical survey).
Do. (ed.)	Indian Constitutional Documents 1757—1939 (2nd ed. 3 vols Vol. 1, from 1757 to 1858 ; Vol. 2, from 1858 to 1917 ; Vol. 3, from 1917 to 1939. Each vol. has an introduction).
Do. (ed.)	The Constituent Assembly of India (1947. An introduction surveys the chief events from 1939 to 1947. Contains full description of the proceedings of the constituent assembly and relevant documents).
Do. and Bose (ed.)	The Cabinet Mission to India. (Collection of documents from February 1946 to July 1946).
Do.	The Constitution of the Indian Republic.
Banerjee, D. N.	Early Administrative System of the East India Company in Bengal (1942. Has used several unpublished records. 9 chaps. Introductory chapter describes the position in Bengal after the acquisition of the Diwani. Ch. 2 traces the history of the office of the governor. The next two deal with the Council and the Select Committee. Chs. 5 and 6 deal with the civil service and its connection with

internal trade. The next two deal with the judiciary. Ch. 9 is a survey of the main principles of the Company's administrative system).

Banerjee, D. N. — Early Land Revenue System in Bengal and Bihar (1939).

Do. — Some aspects of the new Constitution of India. (Reprint of lecture delivered at the Indian Association, Calcutta, about the distribution of powers between the centre and units).

Banerjee, Pramathanath — A History of Indian Taxation (1930).

Barnes, Mrs. — The Indian Press (1948).

Basu, Amarnath — Education in modern India (Survey down to the Sargent scheme).

Basu — Commentary on the Constitution of India (1952).

Besant, Annie — India, Bound or Free.

Bhatwadekar — A history of Indian Currency (1944. Survey from 1800. The last 3 chs. deal with the period 1927—1943. A balanced and dispassionate study).

Blunt, Sir Edward — The Indian Civil Service (1937)

Bombwall — Indian Politics and Government (1951).

Bose, S. M. — Working Constitution of India (1939. Commentary on the Act of 1935 with comparisons to U.S.A. and the Dominions).

Chand, Bhool — The Legislative Council of India 1854—1861.

Chand, Gyan — Local Finance in India (Ten lectures delivered in the Delhi University).

Chailley — Administrative Problems of India (1910).

Chesney — Indian Polity (1894. Official view of the period).

Chintamani — Indian politics since the Mutiny (3rd ed. Lectures delivered in the Andhra University from the Liberal standpoint. Good sketches of leaders like Gokhale).

Coatman — India on the road to Self-government (1941. Official view. Begins from the Reforms of 1909 and comes up to 1940. Deals also with the Cripps Proposals)

Coupland — Indian Constitutional Problems (1944. A study from the Act of 1933 from the pro-British point of view. Vol. 1 from 1833 to 1935; vol. 2 from 1936 to 1942; vol. 3 discusses the future).

Do. — Report on India (3 parts).

Do. — India—A Restatement (4 parts—British conquest. Evolution of the losses and gains of this conquest, India's struggle for freedom to 1945 and suggested solution for satisfying Muslim sentiment without sacrificing the unity of India).

Cowell — History and Constitution of the Courts and Legislative Authorities in India. (An old classic, now antiquated).

Coyajee, Sir J. C. — Indian Currency System (1931. Meyer lectures in the Madras University. Survey from 1835 to 1926).

Darling — Punjab Peasant in Prosperity and Debt (4th ed. 1947).

Dasgupta — Central Authority in British India (1931. Deals with the period 1774—1784).

Dharker (ed.)	Lord Macaulay's Legislative Minutes. (35 minutes with elaborate introduction).
Curtis	Dyarchy.
Digby	Prosperous India (1901. Favoured nationalist view)
Dubey	India's Public Debt (1930. Optimistic).
Dutt, R. C.	Economic History of India (1902. Survey up to 1835).
Do.	India in the Victorian Age (2nd ed. 1906. Though both these works are biassed, they include extracts from original sources. Inadequate after the 18th century).
Eddy and Lawton	India's New Constitution (2nd ed. 1938. Lucid exposition of the Act of 1935. Traces from the Simon Commission. Contrasts the federation proposed with that of Canada).
Furber	John Company at Work (1948).
Gadgil	The Industrial Evolution of India (2nd ed. 1944).
Ghoshal, Dr. A. K.	Civil Service in India under the East India Company (1944. Survey up to 1858, based on original sources).
Hough	The Co-operative Movement in India (1932).
Houghton	Bureaucratic Government.
Ilbert	Government of India (3rd ed. Fine, historical introduction).
Ilbert and Meston	New Constitution of India (1923. Six lectures in the University of London on the Constitution of 1919).
Iyengar, A. Ramaswamy	Indian Constitution. (Constitution of 1909 Surveys also finance of the period).
Iyengar, Srinivasaraghava	Memorandum on the progress of the Madras Presidency during the last forty years of British Administration (1893. Though early, still a storehouse of information).
Jain	Indian Economy during the War. (Lectures delivered at Patna University during 1942-43. Argues for a comprehensive plan based on popular support. Reviews also agriculture, industries, trade and the money market).
Jennings, Sir Ivor	Some Characteristics of the Indian Constitution (1953).
Joshi	Constitution of India (3rd ed. 1954. Present constitution).
Do.	Indian Administration. (Description of the Act of 1935 in 2 parts—constitutional machinery and departmental and district administration).
Kaye	Administration of the East India Company (1858).
Keay	Indian Education in Ancient and Later Times (2nd ed. 1938).
Keith	Constitutional History of India (2nd ed. 1937. Extends from 1600 to 1935).
Do.	Speeches and Documents on Indian Policy (Two vols. 1756—1921).
Kerslake	India, Britain and Empire 1605-1815.
Keynes	Indian Currency and Finance (2nd ed. 1924).
Khan, Sir Shafaat Ahmad	The New Constitution and after. (Sastri Lectures in Madras University in 1941-42 on the Act of 1935).
Do.	Indian Federation (1937).

Kingsley	Population of India and Pakistan.
Knowles, Dr.	Economic Development of Overseas Empire (Vol. 1 deals with India. Biassed view. Good account of famine relief).
Lee-Warner	Native States of India (1910).
Lokanathan, Dr.	Industrial Welfare in India (Survey of factory legislation from 1879, other welfare activities of the state and work done by trade unions).
Do.	Industrial Organisation in India (1935. Study of its most important aspects).
Loveday	The History and Economics of Indian Famines (1914).
Lumby	Transfer of Power in India (1954).
Lupton, Arnold	Happy India (1922. Shows what science can do for India).
Macaulay	Legislative Minutes (ed. by Dharker 1946).
Majumdar	Indian Speeches and Documents on British Rule 1921-1948.
Malhotra	Constitution of India (1951)
Mayhew	Education in India (Survey up to 1920).
Misra	Indian Provincial Finance (1941. Survey from 1919 to 1930, though dealing mainly with U.P.).
Do.	Economic Aspects of the Indian Constitution (1952. Lucid account of the fiscal principles in the present constitution).
Montagu-Chelmsford Report (1918).	
Morison, Sir Theodore	Economic Transition in India.
Muir, Ramsay	Making of British India 1756-1858 (2nd ed. Illustrated in documents).
Mukerjee, B.P.	An Economic and Commercial Geography of India (1932).
Mukerjee, Dr. Radha Kamal	Land Problems of India (Follows the method of Vinogradoff in tracing the origin of the Indian village).
Naidu, Dr. B.V.N.	Indian Trade (Surveys both internal and external trade. Useful summaries of trade agreements).
Do. and Narasimhan	Economics of Indian Agriculture (Part 1 surveys all problems including debt relief legislation. Part 2 deals with attempts made by the state to improve crops and live-stock).
Naoroji, Dadhabhai	Poverty and Un-British Rule in India.
Narain	Indian Economic Life, Past and Present (1929).
Do.	Indian Economic Problems (1944. Vol. 2 part 3 deals with post-war plans like the Bombay Plan and compares India with U.S.A. and Britain).
Nurullah, Syed, and J.P. Naik	History of Education in British India (1943. Covers the period 1781-1937, divided into five sections. Includes extracts from reports of commissions and committees. This is also a survey of indigenous education at the beginning of the 19th century. Fair and impartial).
Palande	Introduction to Indian Administration (5th ed. 1952. Part 1 is a historical survey. Part 2 deals with the new constitution).
Panandikar	Banking in India (1934. Uses the reports of the Central and Provincial Banking Enquiry Committees. Bases on the plan of the report

of the former. 15 chaps. tracing up to the establishment of the Reserve Bank).

Panikkar, K.M. — Indian States.

Pardasani — How India is Governed (4th ed. Good account of the work of the provincial ministries).

Pattabhi Sitaramayya — History of the Nationalist Movement in India (1950).

Do. — History of the Indian National Congress (2 vols. Vol. 1 is from 1885 to 1935. Vol. 2 is from 1935 to 1947).

Philips, Dr. C. H. — East India Company 1784-1834 (1940. Discusses the control of the Home Government on the policy of the Company).

Pinto — Financial System and Administration in India (1944. This is the 16th vol. in Studies of Indian Economics ed. by Prof. Vakil of the Bombay University. Deals with the principle of financial administration in theory and practice in the centre and in the units, budget procedure, functions of the Reserve Bank etc.)

Poduval, Dr. — Finances of the Government of India since 1935 (1950)

Pole, Graham — India in Transition.

Prasad, Dr. Bhisheswar — Origins of Provincial Autonomy (1941. Survey from 1858 to 1919 with references to documents. Traces relations between the centre and the units. An introduction surveys the position of the provinces from the Regulating Act to 1858).

Prasad, Durga — Some Aspects of Indian Foreign Trade 1757—1893 (1932. Describes the Company's methods of trading).

Raju, Sarada — Economic Conditions in the Madras Presidency (1942. Survey from 1800 to 1850, divided into five parts Part 1 deals with the political background and land tenure. Part 2 deals with agriculture ; part 3 industries ; part 4, commerce and part 5, general economic conditions).

Report of the Royal Commission on Agriculture (1928).

Roy, Sir Bijoy Prasad Singh — Parliamentary Government in India (A brief introduction covers the period 1858—1937. The working of provincial autonomy is also discussed).

Rudra, Dr — Viceroy and Governor-General of India (1940. Part 1 deals with his position under the Act of 1919 and his relations with the Secretary of State. Part 2 estimates his place under the Act of 1935. The working of the government of India including the private secretariat of the governor-general is discussed).

Ruthnaswami — Some Influences that made the British Administrative System in India (Meyer Lectures in the Madras University in 1936-37)

Do. — Principles and Practice of Public Administrative (1953. Part 2 deals critically with the Indian administrative system).

Sapre — Growth of the Indian Constitution and Administration (No description of politics).

Sarma	Indian budgets from 1921 to 1934 (Survey from the Act of 1919).
Sastri, K. R. R.	Treaties, Engagements and Sanads of Indian States (1942 Includes a historical survey and discusses the nature of the treaties, with illustrations and interpretations).
Sethi and Mahajan	Constitutional History of India (1952)
Seton	The India Office.
Shah, K. T.	Sixty Years of Indian Finance (Published with a supplement to 1935).
Do.	Provincial Autonomy (2nd ed. 1937. Strong criticism of the Act of 1935).
Sharma, Dr. M. P.	Local self-government in India (1944).
Do.	The Government of the Indian Republic.
Sharma, Sri Ram	A Constitutional History of India 1765—1948.
Shirras, Findlay	Indian Banking and Finance.
Singh, Gurumukh Nihal	Landmarks in Indian Constitutional and National Development (2nd ed. in 2 vols. 1941. Vol. 1 deals with the government under the Company from 1600. Vol. 2. deals with the growth of the councils, local government and the national movement, including the religious nationalism of Tilak. Deals with the Indian states).
	Simon Commission Report (2 vols.)
Sinha, N. C.	Indo-British Economy Hundred Years Ago.
Siqueira, Father	Education of India (2nd ed. 1943).
Sivaswamy, K. G.	Legislative Protection and Relief of Agricultural Debtors in India (1939. Traces from the 'sixties).
Srinivasan, N	Democratic Government in India (1954. Good survey of the present constitution).
Strachey	India, Its Administration and Progress (1903. Official point of view).
Spear	India, Pakistan and the West (2nd ed. 1952).
Thakore	Indian Constitution to the Dawn of Responsible Government (1932. Contains also the text of the Act of 1919).
Thomas, Dr. P. J.	Federal Finance in India (Survey from 1833 to 1939. The period 1920-1939 is treated in more detail. Treatment historical and descriptive)
Thompson, Edward	India, Its Character.
Tinker	Fundamentals of Self-government in India, Pakistan and Burma (1954).
Vakil	Financial Developments in Modern India 1860-1924 (1924).
Do.	Growth of Trade and Industry in Modern India (1931).
Do.	Economic Consequences of Divided India.
Varadachary	Indian States and Federation (Three lectures delivered in the Madras University).
Venkatarangiah	Development of Local Government in the Madras Presidency (1939).
Venkoba Rao, K.	Indian Constitution (Present constitution with comparison to other constitutions).
Visvesvarayya, Sir M.	Planned Economy for India.
Wattal	Parliamentary and Financial Control in India (1953).

White Paper on Indian Reforms (1933).

CHAPTER III

OTHER COMMONWEALTH GOVERNMENTS

Bailey	Constitutions of the British Colonies (1951. Brief description of the government of each colony).
Do	Parliamentary Government in Southern Asia (1953).
Barker	Ideas and Ideals of the British Empire (1941).
Brady	Democracy in the Dominions (2nd ed. 1952).
Brand	Union of South Africa (1909).
Brock	Britain and the Dominions (1952).
Brown, Norman (ed)	India, Pakistan and Ceylon (Contributions by nine scholars on various topics).
Bryce	Modern Democracies Vol. 2 (Best, concise description of the Australian constitution).
Clokie	Canadian Government and Politics (New ed. 1950).
Coatman	British Commonwealth of Nations (1950).
Collins	Public Administration in Ceylon (1951).
Dawson	South Africa (1925).
Do.	Constitution of Canada (1947).
Do.	Democratic Government in Canada (1950).
Egerton	Federations and Union within the British Empire (2nd ed 1924. Has also a good introduction).
Hancock	Australia (Modern World Series 1930).
Hudson, H. V.	Twentieth Century Empire (1950).
Jennings	Commonwealth in Asia (1949).
Do.	British Commonwealth of Nations (1950).
Do.	The Constitution of Ceylon (3rd ed. 1953).
Do. and Young	Constitutional Law of the Commonwealth (2nd ed. 1952)
Keith	Governments of the British Empire (1935).
Do.	Dominions as Sovereign States (1938).
Keiwit, de	A History of South Africa (1941).
Kennedy	Constitution of Canada (2nd ed. 1938).
Mansergh (ed)	Documents and Speeches on British Commonwealth Affairs 1931-52 (2 vols).
May	South African Constitution (2nd ed, 1949).
Nash	New Zealand—A Working Democracy (1943).
Portus (ed.)	Studies in the Australian Constitution (1933).
Sandswell	Canada (World Today Series, (1942).
Soward	The Changing Commonwealth (1950).
Walker	History of South Africa (2nd ed. 1940).
Wheare	The Statute of Westminster and Dominion Status (2nd ed. 1942).
Wight	British Colonial Constitutions (1951. Has a good introduction).
Wrong	Canada (1941).

PART THREE

CHAPTER I

THE UNITED STATES OF AMERICA

Adams, J.A.	The Epic of America (1932. Traces from the beginning).
Agar	The American Presidents (1936. Lives from Washington to Harding).
Bailey (ed.)	Aspects of American Government (1951).

Barger and Laudsberg	American Agriculture (1942. Traces from 1899).
Bates	History of the Congress (1936. Describes from 1789).
Beaulieu, Leroy	United States in the Twentieth Century.
Beard	The Supreme Court and the Constitution (1912).
Do.	Rise of American Civilization (2 vols 1944).
Do.	American Government and Politics (5th ed. 1946).
Bogart	An Economic History of the United States (1929).
Do. and Thompson	Readings in the Economic History of the United States (Source-materials).
Bone	American Politics and Party System.
Brogan	U.S.A. (Vivid picture. Appendex contains the constitution).
Do.	Amrican Political System (New ed. 1943).
Do.	An Introduction to American Politics (1954).
Bruce	American Parties and Politics (1927).
Bryce	Modern Democracies Vol. 2. (Useful for Latin America also).
Do.	American Commonwealth (First published in 1888. The latest ed. is by Brooks—1940. His work was written half a century later to the work of Tocqueville. A commemorative volume entitled Bryce's American Commonwealth was edited by Brooks in 1940 in which the work of Bryce is reviewed by eight american writers in the light of the last half century).
Corwin	The President's Office and Powers (1940).
Davies	American Labour (1943).
Ferguson and McHenry	The American System of Government (3rd ed. 1953).
Do.	The American Federal Government (2nd ed. 1950).
Griffiths	The Congress (1951).
Gross	The Legislative Struggle (1954. Discussion of the work of the Congress and the agencies of government).
Hamilton, Jay and Madison	The Federalist (A good text of this is in Everyman's Library).
Harris (ed.)	Foreign Economic Policy of U.S.A. (Study by 25 scholars).
Hart	American Presidency in Action.
Hitch	America's Economic Strength.
Inman	Latin America (1942).
Laski	American Presidency (1940. Lectures delivered in the Indiana University in 1939. Pleads for a strong, central executive to plan and execute a great scheme of social and economic welfare).
Do.	American Democracy (1948. American life and thought covered in 14 chapters).
Lippincott	Economic Development of U.S.A. (1927).
Lippmann	Public Opinion and Foreign Policy in U.S.A. (1952).
Long	Genesis of the Constitution of U.S.A. (1926).
Merriam	American Political Ideas (1920).
Munro	Government of U.S.A. (6th ed. 1947).
Nevins	A Brief History of the United States.
Do.	America in World Affairs (1941. World Today Series).
Ogg and Ray	Introduction to American Government (6th ed. 1938)
Perkins	Evolution of American Foreign Policy (H.U.L.).
Plaskitt	United States of America (2nd ed. 1953).
Rogers	The American Senate (1926).

Sait	American Parties and Elections (1927).
Sayers	American Banking System.
Schwiz	Latin America (1942).
Smith	Brazil (1946).
Smith	The New Spirit of American Government (1907).

Speeches and Documents on American History (World's Classics 4 vols.)

Story	Commentaries on the Constitution of U.S.A. (1833).
Tocqueville	Democracy in America (1835).
West	American Government (1939).
Wilson	Congressional Government (1894).
Wright	Economic History of U.S.A. (1941).
Young	This is Congress (1943. Realistic account of its working).

CHAPTER II

FRANCE

Barthelemy	Government of France (Rev. ed. 1939).
Binnie	Economic History of Europe (4th ed. 1944. Chap. 7 surveys the work of the economic theorists in France and Germany. Chap. 10 deals with the co-operative movement in France and Germany).
Bodley	France (1902).
Clapham	Economic History of France and Germany (4th ed.).
Earle (ed.)	Modern France (1951).
Knowles, Dr.	Economic development of the Nineteenth Century (Survey of France, Germany, Russia and U.S.A. up to 1914).
Levine	Syndicalism in France (1914)
Lidderdale	Parliament of France (1951).
Malezien and Rousseau	Constitution of the Fourth Republic (Tr. by Ghosh. Text of the constitution in pp. 93-123).
Marriott	The French Revolution of 1848 in its Economic Aspect (2 vols. 1913).
Middleton	The French Political System (1932).
Munro	France, Yesterday and Today (1946).
Poincare	How France is Governed (1919. Tr. by Miall).
Sait	Government and Politics of France (1926).
Saposs	Labour Movement in Post-war France (1931).
Sharp	Government of the French Republic (1938).
Soltau	French Parties and Politics (1930).
Taylor	The Fourth French Republic (1951. Part 4 describes the theory of the constitution).
Thomson	Democracy in France—Third and Fourth Republics (1952).
Williams	Politics in Post-war France (1954).
Wright	The Reshaping of French Democracy (1950).

CHAPTER III

SWITZERLAND

Adams and Cunningham	The Swiss Confederation (1884).
Bonjour	Real Democracy in Operation (1920).
Brooks	Government and Politics of Switzerland (1927).
Bryce	Modern Democracies (Vol. 1. 1923).
Ghosh, Romesh Chandra	The Government of the Swiss Republic (1952. Eulogy).

Lloyd	A Sovereign People (Ed. by J.A. Hobson. 1907).
Martin	A History of Switzerland (Tr. by Booth (1931).
Martin and George	Representative Modern Constitutions (1923. Contains a translation of the Swiss constitution).
Moses	Federal Government in Switzerland (1889).
Rappard	Government of Switzerland (1936).
Do. and others	Source Book of European Governments (1937 Contains the text of the Swiss constitution as amended up to 1935).

CHAPTER IV

ITALY AND THE IBERIAN LANDS

Barnes	Fascism (1932).
Ferro, Antonio	Salazar (1940. Eulogy).
Madriaga (ed.)	Spain (1943 Revision of an earlier history).
Mussolini	The Political and Social Doctrine of Fascism (Tr. by Soames. 1934 A full account of the Totalitarian ideal).
Pitigliani	The Italian Corporative State (1933).
Prezzolini	Fascism (1927. Impartial, but elementary).
Quintennilla	Franco's Black Spain (1946).
Robles	Spain in Chains (1937. Condemnation of the Second Republic).
Rocco	Political Doctrines of Fascism (Justification).
Salazar	Doctrine and Action (1939. His own statement on the principles of his government).
Salvemini	The Fascist Dictatorship (1928. Condemnation by an Italian Liberal).
Spencer	Government and Politics in Italy (1932. Critical, but not an attack. Has valuable quotations).
Sturzo	Italy and Fascismo (1927. Anti-Fascist).
Welk	Fascist Economic Policy (1938. Concludes that Italy did not advance and the standard of life was lowered under Fascism).
West	The New Corporative State of Portugal (1937).
Young	The New Spain (Analysis of monarchical Spain of 1933).

CHAPTER V

GERMANY AND AUSTRIA

Brunet	The New German Constitution (1922).
Butler	The Roots of National Socialism (1941. Traces it through a century and a half of German history).
Clark	Fall of the German Republic (1935).
Dawson	Bismarck and State Socialism (1890).
Dawson	Evolution of Modern Germany (1919).
Ebenstein	The Nazi State (1943. Comprehensive treatment).
Ermarth	The New Germany (1936).
Fraenkel	The Dual State (1941. A good study of the judicial system under Hitler).
Hitler	Mein Kampf (Unexpurgated translation by Murphy 1942).
Holt	German Agricultural Policy (1936. Survey from 1918).
Kruger	Government and Politics of the German Empire (1915).

Kusczynski	A Short History of Labour Conditions in Germany under Fascism (1944. Traces from 1933).
Do.	A Short History of Labour Conditions in Germany (1945. Survey from 1900 to 1932).
Macdonald	The Republic of Austria (1946).
Nathan	The Nazi Economic System (1944)
Olden	Is Germany a Hopeless Case ? (1940. Distinguishes between two Germanies—aggressive Germany inspired by Prussianism and liberal, pacific Germany).
Oppenheimer	The Constitution of the German Rebublic (1923).
Rodnick	The Post-war Germans (1948).
Schumann	The Nazi Dictatorship (1936).
Townend	Rise and Fall of Germany's Colonial Empire (1930).

CHAPTER VI

RUSSIA AND THE COMMUNIST STATES

Bavkov (ed.)	Bulletins of Soviet Economic Development (1950).
Beard and Rodin	The Balkan Pivot—Yugoslavia (1929).
Benes	My War Memories (1928. Explains his political philosophy).
Brant	The New Poland (1946).
Buell	Poland (1939).
Carr	The Bolshevik Revolution (1917-23. A history of the revolution in many volumes. The first vol is in three parts. The first part ends with seizure of power by the Bolsheviks; the second, with the constitution, and the third, with the growth of the empire).
Do.	Michael Bakunin (1937).
Do.	Studies in Revolution.
Do.	Soviet Impact on the Western World (1947. Contrasts with Rome and other Western lands).
Chamberlin	Russian Revolution (1935).
Chang	The Marxian Theory of the State (1931).
Coker	Recent Political Thought (Ch. 6 is a good summary of Communist theory).
Cole, D. M	The Red Army (1942).
Crankshaw	Russia by Daylight (1951).
Dallin	The Real Soviet Russia (1944).
Deutscher	Stalin (1949).
Do.	The Prophet Armed—Trotsky (1954. His life till 1921).
Do.	The Prophet Unarmed (Will come down to his death).
Dobb	Soviet Economy and the War (1941).
Epstein, Israel	Unfinished Revolution in China (Chinese history for the past 1½ centuries and the part played by the Communists).
Fainsod, Marle	How Russia is Ruled (1953. Analysis of government, economic policy and party policy).
Fischer	Men and Politics (A part deals with Russia).
Harper	The Government of the Soviet Union (1945).
Harrison	Lithuania (1928).
Hubbard	Economics of Soviet Agriculture (1931. Study from the origin of serfdom).
Johnson	Soviet Russia since the War (1947).
Keeton	China, the Far East and Future (2nd ed. 1948).
Kerner (ed.)	Czechoslovakia (1940).

Khatre, Dr.	Government of the Soviet Union.
Kolarz	The Peoples of the Soviet Far East (1953).
Laski	Communism (1927. Study from 1381).
Lawton	Economic History of Soviet Russia (2 vols. 1933),
Lenin	State and Revolution (1932. Much of his theory is in this).
Lehrman	Russia's Europe (1948).
Logie	Bulgaria, Problems and Politics (1919).
Macartney	Hungary and her Successors.
Masaryk	The Making of a State (1927). Explains his ideology).
Patterson	Pilsudski (1934).
Pedley	Soviet Russia—A free Union or Empire (Regards it as similar to the Tsarist Empire).
Plamentatz	German Marxism and Russian Communism (1954)
Pratt	Russia – from Tsarist Empire to Socialism (1937).
Pullertis	Estonia (1937)
Rossignol, la	From Marx to Stalin (1940).
Rosinger	Forging a New China (Traces the growth of Communist power).
Roucek	Contemporary Rumania and her Problems (1932).
Do.	Central-Eastern Europe (1946).
Russell, Bertrand	The Practice and Theory of Bolshevism (1921. Pro-Bolshevik).
Schumann	Soviet Problems at Home and Abroad (1946).
Schwartz	Russia's Soviet Economy (2nd ed. 1954).
Sloan	Russia without Illusions (Shows the great improvement in social welfare).
Sprenkel	New China (1950).
Strong	The New Soviet Constitution (1937)
Urch	Latvia (1938).
Vernadsky	Russian Revolution (1922).
Wales, Nym	China Builds for Democracy (Growth of industrial co-operatives under the Kuomintang regime).
Webb, Sidney and Beatrice	Soviet Communism (2 vols. 3rd ed. 1941. Comprehensive and a standard work. But, based on Russian official records and somewhat partial to Russia).
Zadertkis	Introducing Lithuania (1933).

CHAPTER VII

SOME OTHER DEMOCRACIES

Arneson	Democratic Monarchies of Scandinavia (2nd ed. 1949).
Birsch	Denmark in History (1938).
Braekstad	Constitution of the Kingdom of Norway (1925).
Clyde	The Far East (2nd ed 1954).
Cole and Smith	Denmark and Sweden (1938).
Frye, R.N.	Iran (1954).
Fraser-Tytler	Afghanistan (2nd ed. 1953).
Grimley	The New Norway (1939).
Goldmark	Democracy in Denmark (1936).
Heilitz	Sweden (1939).
Hourani	Syria and Lebanon (1954).

Indian Year Book of International Affairs (Vol. 2 ed. by Alexandrowicz. 1953, has articles on the constitutions of Indonesia, Burma and Ceylon).

Issawi	Egypt at Mid-Century (1954. An economic survey).
Jackson	Finland (1938).
Jones	Japan's New Order in East Asia 1937-45 (1954).

Kadduri	Independent Iraq (1951).
King and O'Brien	The Balkans (1947).
Lerman	Israel (1951).
Longrigg	Iraq 900-50 (1953. His earlier Four Centuries of Iraq brought up to date).
Luke, Sir Harry	The Old Trukey and the New (1954. Rev. ed. of his Making of Modern Turkey).
Matsunami	The Constitution of Japan (1930).
Panikkar	Asia and Western Dominance (1953).
T.N. Ramasamy	Outlines of the Economic History of Japan 1853-1953 (1955)
Reischaver	Japan—Government and Politics (1939).
Simon, Sir E.D.	Smaller Democracies (1939. Deals with Denmark, Norway, Sweden, Finland and Switzerland).
Treat	The Far East (1935).
Vinacke	The United States and the Far East 1945-51.
Vincent	Constitution of Belgium (1898).
Ward, Barbara	Turkey (1942).
Wartham	Mustapha Kemal.
Woolf	The Indonesian Story.