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AN INDIAN FEDERATION

Its Constitutional Problems and Possible Solution.

(The Rt Hon V. S. SRINIVASA SASTRI LECTURES—1932-33)

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POSSIBLE SOLUTION

I

‘Mr. Vice-Chancellor,—My grateful thanks are due to the Syndicate of the University of Madras and to the Board of Studies in History and Politics, for the rare honour that they have conferred upon me in asking me to deliver this course of lectures. Anyone must feel proud who is called upon to perform this task; but I feel doubly proud because of the fact that I do not belong to that charmed circle of academicians who have made a life-long study of such subjects as I am about to deal with; and it is therefore a matter of special gratification to me that I should have been called upon to deal with subjects in which they are so much better versed than myself.

I should also like to say, Mr. Vice-Chancellor, that I feel a certain sense of genuine pleasure in the fact that the lectures are associated with the name of a gentleman who has played so great and so large a part in the affairs of our country. The Rt. Hon. Dr. V. S. Srinivasa Sastri has been an adviser not merely of the Privy Council of H. M. the King-Emperor, giving sane advice on various questions relating to the affairs of the British Empire; but I feel it is due to him to state that he has been a councillor of equally rare value to those Indians who have had the opportunity of getting advice from him on most momentous questions concerning the welfare of our country.

THE TITLE OF LECTURES

I have chosen, Mr. Vice-Chancellor, the title of my lectures to be ‘An Indian Federation, its constitutional

problems and possible solution'; and I do not think I need offer any apology to the audience for the choice of my subject. When men's minds are naturally turned and focussed on a subject of that nature, when the foremost idea in the mind of everyone—be he an academician or be he a politician in the more active sense of the word, be he a student at the University or one who has taken his proper share and part in the public affairs of the country—is turned on the political development of one's country, I do venture to think that it will be the right thing for a University to try and understand the problems that face the political administrator and the statesman; and it is because I felt that a great value can be derived from the assistance of academicians of this University, and that the University can contribute its real quota of help in the solution and understanding of these problems, that I have ventured to select this subject for my address. Not that I hope to contribute anything of very great value myself; but I do think that it will provoke thought among those who are better qualified than myself to judge of these questions; that it will make students turn with greater attention to those text-books of theirs which at one time in the preparation for their examinations may have appeared to be altogether repellent, but which at another time, read from another point of view, perhaps tried to be understood in relation to the views that a lecturer may put forward, may be of very great value. And so I venture to put forward this plea, that University authorities, academicians, professors, tutors and lecturers, do have a great part to play in the future politics of the country.

ACADEMIC THEORY AND PRACTICE

I am not one of those who believe for a moment that there is a divorce between academic theory and practical politics; and anyone who has bestowed the slightest consideration on constitutions and their adaptability to practical conditions must have realised that the theorists of constitutions have played a great part in enabling politicians and statesmen to settle the constitutions of various countries. It is true that in the practical consideration of a very complicated problem, men of affairs often find that rules and principles cannot be rigidly

applied and compromises have to be occasionally made. If there is a tendency in academic circles to deprecate such compromises because they are a violation of cherished principles, it is perhaps no more just than the criticism one often hears that doctrinaire principles have no application in practical politics and that the practical administrator must beware of intellectual cleverness. There is a golden mean obviously between these two extremes. It would appear as unwise to disregard the analyses and generalisations of principles of scientific study of constitutions, as it would be to attempt to impose on any country, a constitution purely based on theoretical principles and ignoring the fundamental facts and factors of the life of that country. Believing therefore, as I do, that the professor at his desk has his legitimate and necessary share along with the practical man of affairs in the drawing up of the constitution of a country, I have ventured to choose this, my theme in the hope and in fact the expectation, that at the stage at which we have reached in our deliberations the help of the University will be fully and richly forthcoming in the further consideration of constitutional problems.

FEDERAL OR UNITARY

I shall, without further preamble, deal with the subject of an Indian Federation. It was for some time a doubtful point whether India should evolve as a Federation or whether some other form of Government was either more feasible or more desirable for the country. At first glance, it looks as if it is somewhat anomalous to think of British Indian provinces, with their long tradition of a centralised and unitary government, forming any sort of compact, for a purpose however limited, with autocratic rulers of Indian States in varying degrees of cultural advance and fundamentally differing from one another and from British India, in the methods of administration pursued in their States. There have been not a few Indian politicians and thinkers who have argued that the unity that has been obtained in British India over a long period, by centralised administration, was of the highest value and the direction of the progress of the country lay in transferring power and control in the central government of

British India and in the provinces, from foreign or British agents and irresponsible agents, to Indian and responsible administrators. While none can ignore the obvious advantages that have accrued from a centralised administration, a closer study of the facts of administration will, I venture to suggest, enable us to understand how the necessity for forming an all-India Federation came to be felt.

PROVINCIAL AUTONOMY

In the first place, provinces in British India have long been agitating for a measure of autonomy, for a right to control the destinies internally of their own areas, and for as little of control from the centre as possible. Even in the years before the introduction of the Montagu-Chelmsford reforms, when Provincial Governments were merely the agents of the Central Government and no part of the administration was transferred to popular control, this cry of autonomy had been constantly raised both by official and non-official agencies. Into the history of the appointment of the centralization Commission, its recommendations or the extent to which they had been given effect to before the introduction of the Montford Reforms, it is unnecessary to enter. But it may be said that it gave a very clear indication of the trend of public opinion in the provinces. The introduction of the Reforms of 1920 accentuated the situation and the demand for autonomy grew in intensity, till there were few indeed among British Indians who stood for an absolute unadulterated unitary form of government at the centre of British India. Various administrative measures were adopted which facilitated a greater devolution of power to the provinces, and the reforms themselves postulated that far as the transferred subjects were concerned, they were to be normally administered without any reference to a central agency.

BRITISH INDIA FEDERATION

The line of advance over Diarchy in the provinces was obviously the transfer of 'reserved' subjects to the control of ministers; and it was felt as an axiomatic truth, that when

these subjects were further transferred to popular control, Provincial Governments will cease to be the agents of a central administration. That is how the idea of a British Indian Federation came into prominence; and many writers and thinkers felt that the line of advance politically was to form a British Indian Federation, with responsible autonomous provinces, and a responsible Federal Government for purposes common to all the Provinces. It may be stated in passing that the line of demarcation between a Federal Government and a Unitary Government whose provinces enjoy a large measure of decentralization, is in practice not considerable.

A HALF-WAY HOUSE

But all the time there was a feeling that a British India Federation was only a half-way house; that the real solution lay not even in a British Indian Federation; and if politicians did not press for the logical extension of the idea of that federation; if public men did not boldly and firmly put forward the idea of an all-India Federation, which would include not merely British Indian provinces but also Indian States, it was because they felt doubtful as to the attitude of Indian princes in this matter. Those of you who have followed the drafting of the Nehru Constitution will remember that that committee which went into the question very exhaustively, put forward the ideal of an all-India Federation; they visualised the day when such a federation could come into existence. They did not reach the logical conclusion of a constitution based on an all-India Federation merely because they could not then get, in spite of invitations privately issued and openly sent out, the cooperation of those Rulers of Indian States in the framing of such a constitution. Composed as they were, inhibited by circumstances as they necessarily must have been, with jealous eyes watching their progress—jealous eyes of those very persons who had asked them and challenged them to frame an all-India constitution—how could they get the cooperation of princes at that stage in the drafting of that constitution? And so the Nehru Committee suggested the possibility of an all-India Federation in their constitution, but could not work out its details because one of the

consenting parties to such a constitution was not coming forward to cooperate in the task.

Now I would like to ask myself why it is that an all-India Federation is so necessary at all, and why we should not confine ourselves to a British Indian Federation where unity of interests is so well recognized, where questions can so much more easily be solved, than in, by and through, an all-India Federation?

ALL-INDIA FEDERATION

The question of an all-India Federation is a complicated one and it will be no exaggeration to state that even at the present moment, many are unable to understand the need for it, or the advantages that may accrue from such a Federation. Let us examine for a moment those subjects of common concern to all the provinces which must be administered by a British Indian Federation. They are Customs, Railways, Posts and Telegraphs, Currency and Coinage, and Defence, to name only a few of the nature of subjects of administration which must necessarily be controlled by a central administration. To what extent can British India deal with these subjects through a Ministry responsible to the legislature and not controlled or directed by any authority at Whitehall? It may be pointed out that these subjects are matters of common concern not merely to British India, but to Indian India as well; that the States are as much interested both in the formulation of policy and in the administration of these subjects generally speaking, as British Indian Provinces are. It is true that at the present moment, with an irresponsible executive at the centre of British India, the subjects are dealt with by a Legislature which is largely elected, and laws in relation to them are passed—in theory at least—according to the wishes of that legislature. Critics may argue that Indian States have no voice at the present moment, owing to their lack of any representation in the Central Legislature, either in the shaping of policy or in the administration of these subjects; and that no right of theirs will be taken away if the present system is continued with the mere substitution of a responsible Ministry for an irresponsible Executive. A further detailed examination of the question will show that

neither in theory, nor in actual practice, is the case as simple as it may appear at first sight.

DUAL CAPACITY OF GOVERNMENT

The Government of India at the present moment represented by H.E. the Governor General in Council, has a dual function. It is not merely the head of the British Indian administration, but also represents what has been termed the 'paramount power'. It is in this dual capacity that various questions affecting Indian States and British India alike have been dealt with by the present Government of India. In theory, the States have a right to be consulted; and in some instances at least some of the States have been consulted by the paramount power acting through the Political Department of the Government of India, on questions which affect both British India and Indian States. At a time when the supreme decision was entirely in the hands of the Government of India, when there was no question of consultation, much less of accepting the wishes of an Indian Legislature largely composed of Indian elected members, this dual function was obviously discharged by the Government of India without any difficulty. In actual practice perhaps, and one may go further and say almost certainly, neither British India nor British Indian opinion was taken into confidence before the introduction of such measures. But with the introduction of the new Government of India Act in 1919, things began to change. British Indian opinion had a right to be consulted; and in fact on many of these issues it was necessary to secure its cooperation and active assent before a measure could be passed into law. The series of Tariff Bills that have been dealt with by the British India legislature; the duties that have been levied from time to time on imported articles; the help that has been rendered to certain indigenous industries on the recommendation of the Tariff Board are cases in point. But in these matters, it is claimed that the Government of India, before it submitted for the decision of the Central Legislature its proposals, had consulted the wishes of Indian States and Rulers, and though not bound by any one of them for obvious reasons, had assured itself of the general support of the majority of the States. The paramount power had

therefore discharged its duty of consulting the interests of Indian States; and the Government of India then had only to consult the Indian Legislature to see that the resultant proposals had to an equal extent the support of that legislature. It was obvious, however, that while in theory this may be all right, in actual practice, it worked very differently. Even if the paramount power had been scrupulous enough to have really consulted every one of the large and small States, to have weighed with meticulous care the opinions of each one of those States, even then, when the measure had actually gone before the legislature and that institution was completely seized of it, the amendments carried out by it were not capable of being subsequently referred for similar consultation to the Indian States.

During the years that followed the introduction of the new constitution, the Indian States were not slow to realise the manner in which they were being affected by decisions of the Central Legislature; and almost simultaneously with the introduction of the new constitution, a reorganised Chamber of Princes had been brought into existence, a body which during the last decade, has had very considerable influence in organising opinion among the Rulers of Indian States and in bringing them together for joint confabulation—a task which had never been attempted before. For the first time in the history of India, rulers of various States came together to confer in peace on matters which affected them in common and to take measures to protect their Order.

STATES' POSITION

The position of Indian States with reference to the Government of India has changed from time to time. Before 1818 they were absolutely independent States with full sovereign rights, and with no sort of subordination to the East India Company. Since that time, however, many of the States accepted British suzerainty and came to occupy a position of subordinate isolation. After the Mutiny, when the Government of the East India Company passed into the hands of the Crown, a greater degree of unity was gradually brought about between Indian States and British India. The historic

proclamation of the Queen granted these States the position that they occupied under various treaties. It said :

'We hereby announce to the Native Princes of India that all treaties and engagements made with them by or under the authority of the Honourable the East India Company are by us accepted and will be scrupulously maintained and we look for the like observance on their part. We desire no extension of our present territorial possessions; and while we will permit no aggression upon our dominions or our rights to be attempted with impunity, we shall sanction no encroachment on those of others. We shall respect the rights, the dignity and honour of native princes as ours; and we desire that they as well as their own subjects should enjoy that prosperity and that social advancement which can only be secured by internal peace and good government.'

But while the treaties made by the Company were accepted as binding on Her Majesty, the policy of the Government from that day has been to make the Indian States integral portions of the Indian polity. This view was stated within a few years of the Proclamation by Lord Canning, when he declared that 'the territories under the sovereignty of the Crown became at once as important and as integral a part of India as territories under its direct domination. Together they formed one direct care; and the political system which the Moghuls had not completed and the Mahrattas never contemplated, is now an established fact of history.' But this very speech indicates that the unity has been brought about by two distinct attributes of the Government of India, one derived from the fact that the Crown of England was the paramount power over the feudatory States; and the other that it had direct and complete domination over that portion of India called British India. However much the paramount power may have extended its rights and privileges, to whatever degree Indian States have been subjected to the supervision and control of that power, the distinction between these two functions has to be kept in mind.

REFORMS : EFFECT ON STATES

When therefore the substitution of the present irresponsible executive at the centre by a responsible ministry, controlled by an elected British Indian Legislature, was contemplated, Indian Rulers began to ask the question as to how they would be affected by any decisions of such a legislature and

such a government. During the decade since the introduction of the new reforms, Indian State rulers have been pressing for some direct voice in the management of affairs of common concern to British India and Indian States. A reference to Resolutions passed by the Chamber of Princes from time to time would show how the mind of the Princes has been reacting on these various questions and what pressure was being brought to bear on the paramount power. The matter came to a head when the Butler Committee was appointed and the States demanded that without their own agreement, the rights and obligations of the Paramount Power should not be assigned to persons who are not under its control, as for instance, an Indian Government in British India responsible to an Indian Legislature. The Butler Committee in fact held that the 'Treaties, engagements and Sanads have been made with the Crown and that the relationship between the Paramount Power and the Princes should not be transferred without the agreement of the latter to a new Government in British India responsible to an Indian Legislature.' The report of the Indian Statutory Commission carried the matter a step further. The Simon Commission recognised the force of the contention of the States and their proposal for a Committee wherein questions of common concern may be debated between the representatives of Indian States and British Indian representatives, was a formal acknowledgement of the justice of the claims put forward by the Indian Princes. But the constitution suggested by the Simon Commission postulated still an irresponsible executive at the Centre and the proposal for a Committee was only intended as a method whereby the views of Indian States and of British India could be ascertained by the Paramount Power and the Government, before a decision on the subject was arrived at.

CONSULTATION BUT NO DECISION

If it was merely left at the stage of consultation, the paramount power would again come, in some form or another, and would try to hamper the decisions of the British Indian legislature. It was under such conditions, that the necessity of an all-India Federation began to be increasingly felt by many politicians who had bestowed thought on these pro-

blems. British Indian statesmen and Rulers of States equally, felt that the line of advance and the solution of these problems was, not to have a mere British Indian federation, with some sort of consultation with an amorphous body composed of representatives of Indian States' Rulers, but that the real line of progress was by an amalgamation of the interests of these two parts of India, by getting together the representatives of these two parts into a common legislature, and by having a policy adopted by a majority of the legislature. If on the other hand it was held—as Sir John Simon and his Commission advised—that in matters of common concern, whereas the British Indian legislature could formulate its policy but before the policy could be given effect to, a sort of consultation should take place between a committee of the British Indian legislature and a committee of the Chamber of Princes—that this Joint Committee should have, not indeed the power of finally deciding, which one could understand, but of merely coming together, confabulating and arriving at no conclusions whatsoever—the result could easily be imagined. In the name of the States, the paramount power could effectively intervene and state that a decision of the British Indian legislature cannot be carried out, because it is in conflict with the aim and views of the States themselves. Not merely that; It is obvious that in many instances, a genuine feeling may be entertained by British Indians that behind the decisions of some of the States at least, in this amorphous body which I have called a committee of the Chamber of Princes, may be the opinion, the real purpose and intentions of the paramount power itself. These irritating doubts and suspicions cannot possibly lead to a successful or smooth working of the government. It must necessarily involve friction, creaking at every stage, and the machinery must necessarily break down. Such were some at least of the reasons why an all-India Federation was considered more desirable than a pure British Indian federation.

CHAOS IN ADMINISTRATION

Taking a simple instance—the administration of the railway system—British Indian railways cross through a number

of State territories and at the present moment, State jurisdiction has been ceded to the Government as represented by its paramountcy, and the administration is thus run more or less efficiently. The state of affairs would be entirely different if the Paramount Power were to re-vest that jurisdiction in the States, and ask British India to make its own terms with Indian States. If every State were to use its jurisdiction, the railway line from Delhi to Bombay would have to subject itself to 30 different jurisdictions, involving an impasse fearful to contemplate. In the administration of customs, with maritime States lying in all parts of India, and with some of the bigger States on the borders of the land frontiers of India, nothing but chaos could ensue, if there were not some arrangement whereby common agreements could be reached between British Indian Provinces and Indian States. Currency and Coinage again, presents a similar problem, though of a more technical nature and more difficult to follow. Under present conditions, owing to the intervention of the Paramount Power, very few of the States have the right of minting their own coins; and none except Hyderabad possesses the high dignity of fiduciary issue of paper, which however, is practically meant for internal circulation. Most of the States have closed their mints by agreements made with the Paramount Power, some permanently, and some for a definite period of years. The economic chaos that would ensue if these rights were to be revived or extended, will easily be understood by any student of economics.

IS BRITISH INDIA HELPLESS ?

What then is the position of British India? If in the course of the statement made above, the inference is drawn that British India is absolutely impotent to manage its own affairs and that it cannot administer any central subject unless the States joined in a Federation, it would be a very incorrect appreciation of the aim of the arguments advanced so far. It is not suggested that British India cannot administer these central subjects so far as it concerns its own provinces. There is no impossibility in the functioning of such administration. Indeed if there were not the cheerful hope that Indian Princes are willing to come forward and join in an Indian federation,

there would have been no choice but for British India to proceed as a federation and try to manage its affairs as best it can. On the basis of reciprocity or even by establishing a land cordon where the customs union or *zolleverin* is threatened, and by similar measures it will not be beyond the wit of British Indian statesmen to deal with Indian States and manage such subjects of common concern. All that is intended to be pointed out is that the administration would then have to be carried on under difficult and trying circumstances from day to day, and the extent of responsibility in the administration of these subjects would have been very considerably neutralised by the action of the Indian States.

FEDERATION—NOT A NEW IDEA

It was under these circumstances that men's minds turned to the question of an all-India Federation as a practical solution of the immediate future. Many of our best statesmen—both in British India and the States—have thought of this idea. They have dreamt of a unified India, including British Indian Provinces and Indian States, speaking in the name of the whole nation, voicing forth the sentiments, hopes and aspirations of peoples who though divided by artificial geographical boundaries are still ethnologically and by consideration of economy and politics, unified. One of the Rulers of Indian States is reported many years ago to have said :

'My goal is the United States of India, where every province, every State, working out its own destiny in accordance with its own environment, its tradition, history and religion, will combine together for higher and common purposes; each subscribing its little quota in a labour of love freely given for a noble and higher purpose.'

The Maharaja of Bikaner in a speech in 1928 said :

'Those who have given the subject of the future of British India and the Indian States some thought, including in an humble way myself, cannot but come to one conclusion, namely that the ultimate solution and the only salvation of India is some kind of Federation.'

And so there have been various forces at work which have resulted in the consummation of this idea—the formation of an all-India Federation, combining in one whole, Indian States

and British India—entities which have so far been kept apart and which have had very little opportunities either of exchange of ideas or of joint action for common purposes.

FORCES FAVOURING FEDERATION

The great ideal of national unity which has been emphasised during the past few years and which has always dominated the minds of Indian politicians as well as Indian rulers, has to a large extent been the cause for the response that States and British India have been able to make in bringing about the federation. The demand of British India again to exercise rights over subjects of common concern to the fullest, furthest and freest extent possible; the demand for responsible government and responsible administration of those subjects which, as has already been shown, could not be conceded fully, or if conceded would have been indirectly thwarted if the States had not entered the federation—has also been one of the dominating reasons for the emergence of this idea of an all-India Federation.

India moreover has been playing a larger and greater part in international affairs, though some would belittle its real value and significance by pointing out the undoubted consideration that in such matters British voice was still predominating, and British opinion was undoubtedly influencing those who spoke in the name of India at such gatherings. But even so, at the League of Nations, at other international conferences, at the Imperial conferences, representatives of India—both British and Indian, provinces and States, rulers and democrats, have taken common part. In fact, during the past few years, British Indian politicians have led delegations to Geneva alternately with Rulers of Indian States; the identity of interests between the two Indias had to a certain extent to be recognised; and the experience of the delegates, whether they were from British India or represented ancient houses in Indian States, made them feel the necessity for organising the whole constitution on the basis of an all-India federation. Considerations therefore of international prestige, of the position which India would undoubtedly occupy in the comity of nations, if it were one combined whole, had no little part in the shaping of this idea of an all-India Federation. Again

the question of common defence for the whole country—which requires special treatment and about which I hope to say something later—has also led to the same conclusion that in the formation of an all-India federation lies the true and eventual solution of this most difficult, complex and vexed question.

The solution again of complaints, claims and interests between British India and Indian States, which must necessarily arise in the administration of subjects common to both parts of India, by peaceful and amicable means, could only be brought about essentially by means of deliberative bodies in which both the States and British Indian provinces are represented. The necessity for such amicable settlement of questions of common interest to the two parts of India must be clear to you from what I have already stated; and this again has been one of the factors that has led to the emergence of the plan of an all-India Federation.

More than all, the economic crisis through which the world is passing and which India has not escaped from, has shown the essential unity of interests between British India and Indian States, and a joint deliberative body was felt to be essential for the consideration, adjustment and solution of vital economic questions.

Indian States and British Indian provinces, moreover, could not be kept in different watertight compartments. The surging waves of nationalism which have washed British India during the past few years, could not possibly leave Indian States high and dry however much they may be protected by an imperturbable paramount power. States which had been nurtured in seclusion, watched over with jealous interest by those who wanted to keep them in 'splendid isolation', kept apart from all those supposedly contaminating influences which came from parts of British India, given over to wild ideas of modern democratic thought, found themselves in the vortex of movements for which they were not responsible, and subject to conditions which they felt little hope of governing or controlling. That impelling consideration—the economic one—as much as the realisation of the fact that the two parts of the country acted and reacted on each other, led again to the idea that in an all-India Federation lay the only

true and permanent solution of the political difficulties through which the country was passing.

Above all, in the life of every nation, there comes a time when great individuals, with far seeing courage, commit their whole generation to a policy which they feel is in the best interests of all; and so it has been with our country. During the cataclysm through which we have passed during the last few years, men's minds were sharpened as never before, and individuals of light and leading, having thought over the matter most carefully and deliberately, felt that in the formation of an all-India Federation lay the salvation of India. It would not be desirable to mention the names of such individuals who have played a great part in working out this idea and in making it a possibility for the immediate future. But I have no doubt that such names will suggest themselves readily to those who have followed with any degree of interest the events of the last few years in our country. Beginning with the formulators of the Nehru Scheme, there have been a series of statesmen, both in British India and Indian States, who have given their best attention to the problem, and have thrown the whole weight of their influence and name in the task of preparing the country for its inevitable future.

ANOMALIES—AND THE SUPREME NEED

I have dealt at this great length on the peculiar problems before the framer of an Indian constitution, because an understanding of these problems would lead to an understanding of the special adjustments and compromises that have inevitably been necessitated, to bring about the realisation of that deal. Before I proceed to deal with the details of the structure, that may be built up on the basis of an all-India Federation, and the special provisions that have to be made to reconcile conflicting claims of Indian States and British Indian provinces, of various communities, classes and creeds, of majorities and minorities, I should like to state that an appreciation of the vital need of forming an all-India Federation as the only true solution of the constitutional problem, will lead me to assess at its real value some of the special provisions that are suggested. It will be found in the course of my further exposition of the constitutional structure, that it is by

no means either an ideal or a perfect system that is attempted to be set up; that there are anomalies of one kind or another in many of its attributes, that the fear of the structure creaking in many places is not altogether unfounded. But there is one supreme consideration that may be borne in mind. To those who feel that much has been given to a Federal Centre and much taken away from Provinces and sovereign States; and to those many more, who feel perhaps more strongly that enough has not been given to the Federation to justify the hope that it will function efficiently, and that it will fulfil the amplest needs of the country and its vast population, I would only like to recall the words of a great statesman. After having established the North Germanic Federation in 1871, through methods partly of cajolery and partly of coercion, through all the intrigues that Bismarck was capable of, even to the extent of provoking a great war with a neighbouring State, so as to bring about a unity of effort in domestic matters—Bismarck made these observations with reference to the Federation that he was able to bring about :

‘The defects of particularism, weakness abroad, heterogeneity at home, obstacles to development of commerce and transport, the Federation had completely combated; and completely to abolish them is its further duty. Give it enough time; Centralization is more or less a matter of force and is not to be carried through without a violent operation, sinful in the sense of the constitution; and such action whether formally covered or justified, leaves places which bleed internally, and no man knows for how long this may go on. I believe that one should ask oneself: In the Germanic States, what can be regulated in common? and that which need not be regulated in common should be left to local development. Thereby one serves freedom and one serves welfare.’

UNITS—NOT ALL ENTHUSIASTIC

There is also the consideration to be borne in mind, that under the circumstances under which an Indian Federation is being set up, all units which will form the Federation may not be equally enthusiastic either of the constitution, or of the central fact which underlies the constitution that responsibility for administration must inhere in Indian hands. It may therefore be that some units may have to do all in their power to attract the entry of others into the Federation; and that in particular British India may have to make

special concessions to facilitate the entry of Indian States into this Federation. To have poured ridicule on their claims—or as some would have them, their pretensions; to have riddled them with criticism for that exceptional treatment which individual States required—was a comparatively easy task and facilely calculated to break up all prospect of an all-India Federation and to postpone to the Greek Kalends the prospect of a United India. But to genially permit and suffer the characteristic anomalies which States cannot part from, to have allowed even recognition of some of them by the Federation, was perhaps the more difficult, if also, the wiser and more farsighted task. Above all, in drawing up constitutions for vast peoples and cultures, one must avoid the mistake on the one hand of making provision for every eventuality and safeguarding all matters for all eternity; and on the other, of just looking over the hedge and not taking note of what is inevitable in the very near future. There is a resultant which no constitution will provide for, but all framers of constitutions must indubitably take note of in the working of a federation. The inevitable influence of personal contacts, of pleasant amenities and of mutual understanding which will grow up in the legislatures, where men drawn from various provinces and States will work together and will be fostered in the lobbies, that influence will do more to smoothen conflicting sentiments and to avoid causes for friction, than any frigid provisions on the Statute book.

THE FEDERATING PROCESS

We shall now turn to a consideration of the constitutional proposals which are involved in the setting up of an all-India Federation. The first consideration that presents itself to one in thinking of the formation of such a Federation, is the enormous fact that the various units which will constitute the federation occupy differing degrees of status and possess varying powers of sovereignty. Other federations are known to students and have been working for years and generations; but no federation is comparable to that which will be brought into existence by an all-India Federation. Canada with its autonomous provinces, Australia with its autonomous States,

both owing common allegiance to a King, present one form of federation. The States of America, autonomous again, free and owing no allegiance to any one after the American War of Independence, present the other form of federation which has been brought about. The North Germanic Federation established in 1871, formed of States ruled by princes of equal status, though not of equal importance, also affords another example of a federation. So does the Swiss Federation, composed of its various Cantons. But in every one of these cases, the status of the units was more or less equal; they were not in different categories. Take the case of India: what is the position of British Indian Provinces? What would have been the position if a British Indian federation had to be established? The provinces have at present little autonomy indeed. The 'transferred' subjects form just the fringe of the administration which has been transferred to popular control. The great taxing subjects, the great financial resources of the government, are still in 'reserved' hands; and that means that they are being administered according to the wishes and dictates of the Central power. The reserved department is merely an agency department of the Government of India, and in any detail whatsoever, however ludicrous it may be according to theory, and according to recent experience in practice also, the most minute control has been and could be exercised by the Government of India over the administration of the reserved departments of the provinces. Therefore provinces are not sovereign in any sense of the word; they are absolutely dependent, and if a federation has to be formed, the provinces have to be re-incarnated; they have to be made sovereign units. According to the ordinary idea of a federation, States of equal status possessing sovereign rights are supposed to give up a certain amount of their sovereignty to a common organism that is thenceforward brought into existence, called the federal organism; and that amount of sovereignty which has been given up is exercised by the federal centre. In British India, on the other hand, the unitary Government at present has the entire sovereign power, and it is by delegation to the provinces, by making the provinces grow to the status of sovereign provinces, that a British Indian federation can be brought into existence.

So that, the process has really to be reversed in the case of British India.

Taking the States, on the other hand, I have already tried to show to you that Indian States do possess sovereign powers in theory; that, apart from the fact that the paramount power can exercise some amount of influence on certain specific contingencies arising, Indian States have complete right of sovereignty so far as their internal administration is concerned. They have ceded their foreign and political power to the Government of India; but unless a State is misruled or unless the dynastic succession of the State comes into question, the paramount power, in theory at any rate, cannot interfere with the State; so that States are sovereign, and when a federation is formed, States have to cede a certain portion of their sovereignty. Therefore many people have asked the question: 'How can a federation be brought about between provinces on the one hand who are so utterly dependent, and States on the other who are sovereign States?' I see no difficulty in the matter. It is only a question of adjustment; of the Central Government delegating a great portion of its power to the provinces; and of the States and Provinces joining together in vesting a certain amount of power in the hands of the federation.

MERE PROVINCIAL AUTONOMY—A DANGER

What will really happen if an all-India Federation is not to be brought about at once? Well, the process of the Centre delegating its power to the provinces and thereafter begging from the provinces for power to form a federal centre, will then come about. We do not want it to come about; and therein you will understand the reason why many prominent politicians of British India vehemently opposed the idea of provincial autonomy coming first, and a federation either of British India or of all-India, perhaps being postponed till the working of provincial autonomy was known. The danger of it is obvious. When a federation is to be formed, the question of the States ceding certain of their sovereign rights has always been a difficult question. States have claimed that they cannot part with more than a certain portion of their sovereignty; and it was only after a great

deal of agitation and after prolonged negotiation, that many of the States have been able to come forward to form a federation. When I tell you that it took 13 years for Australia and at least six conferences held for months together, before the Australian Commonwealth Bill could be accepted by the various provinces in Australia, you would realise the tremendous difficulties.

And British Indian politicians asked themselves the question: 'is it not madness to give up the advantage that you now possess of a unitary government established in the centre; British Indian provinces have no sovereign rights at all and therefore it is much more easy to take what you want for the federal centre of the future and relinquish only the rest to the provinces. The only difficulty therefore lies in negotiating with the States and not with individual British Indian provinces. But how difficult would it be if you should cede complete sovereignty to the British Indian Provinces and thereafter look to them for a cession of those powers of sovereignty which are required for federal purposes?' The solution therefore lies in getting a federation established simultaneously with the grant of provincial autonomy and not in making the Federation a mere contingency after provinces get full rights from the centre.

II

THE FEDERAL LEGISLATURE

The constitution of a federation involves the establishment of three agencies—a federal legislature to make laws which will be applicable to the various federating units; a federal executive which will carry out these laws and administer those common subjects which are entrusted to the federal government; and a federal court which will resolve disputes that may arise either in the power to make laws or in the application of those laws, either between the federal centre and a unit; or between two federating units.

Tonight I would like first to discuss the question of the federal legislature. In all federations, it has been assumed that the legislature should be of the bicameral system; that

is to say, that there ought to be two houses, a lower house representative of the will of the people and an upper house representative of the interests of the federating units as such. Whatever controversy there might have been with reference to the desirability or advisability of having a bicameral legislature in a unitary form of government—and there has been a great deal of controversy over it—such a controversy has hardly been raised with reference to a federation. Till very recently, one can say that opinion was undivided that a Federation necessarily postulates the existence of two houses. As those who have studied the history of federations are aware, it was the American Federation that first laid down this principle of two chambers firmly and unmistakably. But latterly the theory has been evolved by some constitutional writers of very high repute, that a bicameral legislature is quite as unnecessary in a federation as indeed it is claimed to be by many people in a unitary state. They argue that a single house could carry out all the purposes of the legislature and that it is a waste both of time, money and energy, to have a second chamber which will have any sort of advisory or controlling influence. They, in fact, suggest that the old consideration of the interests of the State being preserved by a second chamber does not really operate and is of no effect whatsoever, so far as the working of federations is concerned. But if you examine that theory further, you will find that they have a different conception of the development of a State altogether.

STAGES OF ADVANCE OF STATES

Their conception places the State in three grades of advance. The first is the conception of a confederation, where States of sovereign power come together merely for advisory purposes, by trying to get help from each other under certain specified conditions. The resolutions that are passed by the confederation are purely of an advisory nature and each unit of the confederation is free to adopt or reject these resolutions. To take a modern example, the League of Nations may be likened more or less to a confederation. If a resolution is passed at the International Labour Conference at Geneva, every sovereign State which is a member of

the League of Nations, is expected to adopt it, but may even reject it. The passing of the resolution at Geneva has no automatic effect in any single State that is a member of the League. That is only a very rough parallel to the idea of a confederation. In fact, many federations have evolved from a confederation. The North Germanic Federation was a confederation of sovereign States till 1871 and by the great influence and power of Bismarck, it thereafter became a federation. Some modern constitutional writers feel that after a confederation has worked for some time, a greater cohesion can be brought about between the various sovereign units and the confederation may develop into a federation, with a central purpose, with a common objective, with laws made applicable to all the States merely by the fact of their having been passed by a federal house, and of administration being carried on similarly by a common executive. The earlier conception, and in fact the conception of most constitutional writers of authority, is that a federation is an end in itself, that there need be no further advance.

A CENTRAL STATE

But modern political writers like Prof. Laski of England and his colleagues in Germany, have thought of this Federation merely as a half-way house. They carry the progress of the State a step further. When we come to the question of administrative powers and of residuary powers, we shall see that federations which have been established with the idea that State rights are to be preserved intact, have gradually evolved into some form of approximation to a centralised Government. They therefore claim that the real purpose of the State is not to remain perpetually as a federation, but that it should become a centralised administration, a centralised government, with a large devolution of legislative powers, if necessary, to the units. Having this in mind, Prof. Laski and other writers think that there is no place for a second chamber representing the individuality, and perpetuating the individuality of federating units and that the sooner the second chamber is abolished, the more facile will the task become of turning the federation into a centralised government. But that is only a very recent theory which

Prof. Laski, with his idea of the pluralistic State, has evolved and which has not been accepted either by administrators or politicians, or indeed by, what I may term, the orthodox section of constitutional writers. Leaving aside that theory for a moment as obviously incapable of adoption to Indian conditions, we shall confine our attention to the more normal feature of a federation, that is to say, that a federal legislature is generally composed of two chambers, an upper chamber and a lower chamber.

WHY A SECOND CHAMBER?

The need for an upper chamber arises from a desire for the preservation of the rights of sovereign States as far as possible. At the time when the American federation was in formation, this question arose in a very acute form. There were advocates of the smaller States who said quite logically, that while they had given up certain powers to the federal centre, they had preserved intact many other powers, and that such powers could only be maintained in future by a specific representation of States in a chamber which will take care of the individuality of such States. The controversy that raged over the preservation of rights of these individual States and over the power of the lower house, is one of those historic controversies which more than shook to the foundation the possibility of a Federation being formed for the U.S.A., and, but for the fact that ultimately sheer common-sense prevailed on both sides, perhaps a federation of the U.S.A. would have been an impossibility.

EQUALITY AND PROPORTIONALITY

The States, small and big, which were intended to form the American Federation, may have had equal status, and equal rights of sovereignty in theory; but certainly did not possess equal powers in fact. To compare the big State of New York with its population of ten millions, with the small State of Nevada with its population 18,000, and to suggest that New York and Nevada should be placed on an equal and identical basis in any constitution was to argue against all natural tendencies; and yet, 150 years ago, that argument was considered not merely germane to the framing of the

constitution, but absolutely logical for the protection of the States' rights; and it was pressed not merely for the upper house but also for the lower house so far as representation was concerned. Jefferson, the advocate of the smaller States, said, that if population was the only basis of representation either for the lower or the upper house, these small States which were sovereign States, would be devoured by one single large State like New York, or Philadelphia, and that the process of framing a constitution whereby only certain powers were given to the Federal centre and others preserved for the units, need not be gone through. Madison, on the other hand, the advocate of what I shall term 'proportionality' (that is to say of a legislature having its representatives on the basis of population,) argued that the bigger States contributing more for the success of the Federation must have a proportionately greater representation in any legislature. Ultimately a middle line was taken. Both the advocates of the great States and the advocates of the small States, had to be satisfied with some sort of compromise, and it is interesting to note, however anomalous it may be, however illogical it may appear to be, that the essence of successfully forming a federation consisted in being able to agree to or arrive at compromises. While they gave up the principle of equality so far as the Lower House was concerned, they insisted on the formation of an upper house on the principle of 'equality' as between State and State. It was because the States feared that some of them may be engulfed after the Federation had been set up, that an Upper Chamber was necessitated, and States were represented therein.

Other arguments which are usually applied in the case of unitary Governments, were also present in the minds of those who tried to draw up a Federal constitution for U.S.A., and the idea that the second chamber would be some sort of a check on the precipitate advocacy in the lower house of thoughts and ideas which may not be well and maturely considered by the public, was one of those considerations which led to the formation of a second chamber. Madison again, who argued for the second chamber with all the vehemence that a good advocate can usefully employ, said that in the years to come the second chamber would play a big

part not merely in preserving the individuality of the various States concerned, but also in trying to see that interests which may not always be represented adequately in the lower house, may not be swamped or ignored by hasty legislation that may be passed by that house.

Ultimately, the theory of 'proportionality' or representation according to population, prevailed in the lower house; and in the upper house, the theory of 'equality' prevailed.

EXAMPLES OF SECOND CHAMBERS

The example of the American constitution has been copied by every one of the subsequent federations. In America, Nevada with a population of 18,000 has two representatives on the Senate or the second chamber, equally with New York which has a population of ten millions. Pennsylvania, a big State which has as much population as the six States which go under the name of New England States, has two representatives, as against two representatives from each of those six States. So also when the Federation of Canada was formed, Lower Canada and Upper Canada, the French and British Provinces, were each given 24 representatives; and the maritime provinces which were formed of Nova Scotia and New Brunswick, were taken as a single unit of the Federation and each of them given 12 representatives. So it has been in Australia; and so it has been with reference to the Cantons of Switzerland.

These examples could not be ignored in the consideration of an all-India Federation.

STATES REPRESENTATION ONLY IN SENATE

If there were to be two legislatures, the first representing popular opinion and the second representing the State as such, the question naturally arises, how such representation should be secured from British India and from Indian States. At one stage in the course of the discussions, it looked as if the Indian States would not agree to have any share in representation in a lower house, but that they would confine their representation to the upper house. They possibly felt that it was not expedient for them to send representatives to the lower house on the same basis as similar repre-

sentatives would be sent from British India. An acceptance by them of representation in the lower house would involve, they foresaw, at some time or other the introduction of responsible government in their own areas and the election of members to the federal lower house on the basis of a popular franchise. The problem would have been extremely complicated, if it were not well-nigh impossible of solution, had the States continued in this attitude and contented themselves merely with a representation in the upper chamber. The lower house would then have been representative purely of British India, and though it might discuss all questions which were of common interest, it could never have had that power, status and influence which a popular chamber would have either in a unitary or in a federal system of constitution. The upper house, being the only house which contained representatives of all the federating units including the States, must necessarily have developed as the main house of the legislature; the relative powers of the two houses must necessarily have been different. Nothing could have been final which was passed only by the lower house; and nothing which had not been accepted by the upper house could have had any binding effect at least so far as Indian States were concerned. It is a matter of gratification that the wiser State rulers saw the implications of the position that was advanced and the impossibility of maintaining it, and conceded that State representatives should enter both houses of the federal legislature.

REPRESENTATION IN LEGISLATURES

The question of the representation of Indian States and of British Indian Provinces in the two legislatures must necessarily prove one of the most difficult of questions for solution. Arguments may be advanced on the one side as cogently as on the other, that representation should be of a particular proportion as between Indian States and British India. In most federations, while States have agreed to a representation on a population basis in the lower house, they have been firm in requiring a different principle to be adopted so far as representation in the upper house was concerned.

BRITISH INDIA—ONE UNIT, AN OBSESSION

This doctrine of proportionality in the lower house and equality in the upper house, has been recognised as we have seen in the federations of America, Canada and of Australia. The question arises, what shall be the policy so far as India is concerned? There has been a long argument as to whether British India should be considered as one unit as against Indian States, though in entering the federation, provinces of British India would enter as separate units as much as Indian States. It is perfectly true that British India, as has already been pointed out, has attained a certain amount of unity of purpose and of aims. By long years of centralised administration and by the efforts of the people of British India, there has developed a spirit of common understanding between inhabitants of various geographical areas. But it is both theoretically and in actual fact, incorrect to assume that in a federation, British India will act as one unit. However incorrect the assumption may be, Indian States were obsessed by the idea that they were entering a Federation in which the dominant partner will be British India. Ideas of supremacy which Prussia soon obtained in spite of the other States, in the North Germanic Federation, undoubtedly weighed with many representatives of Indian States. It therefore became apparent that the claims of States for representation in the lower and upper houses would largely depend upon the consideration whether they felt that British India was going to become the dominant partner in the Federation or not. The representatives of the States demanded that following the analogy of other Federations, there should be equality of representation in the upper house as between Indian States and British India.

THE PRINCIPLE OF WEIGHTAGE

The matter has been discussed threadbare at various meetings. On the one hand, there has been firm, strenuous almost vehement opposition against the idea of any weightage being given to States as such. It has been argued that the principle of weightage is vicious and that whatever justification may exist with reference to minorities, no such consider-

ation could possibly be allowed to prevail in the case of representation of Indian States. Their claim for weightage in the lower house has been criticised as unnecessary and involving an irrational basis; and their claim for weightage in the upper house has been resented by some at least as an infringement of well known theories. It has been argued that federating units never claimed weightage and that it would be a novel idea—an anomaly of the worst kind—to recognise this principle in an Indian Federation.

As in many such cases, both reason and truth is to be found in some *via media* between these two extreme and conflicting viewpoints; it is futile to think of British India as one unit in the federation, even as it is almost ridiculous to think of Indian States acting as one united body in such a federation. Regional and geographical ties will play a larger part in bringing about unity of effort between the provinces and States, than any theoretical consideration of whether a unit is a British Indian Province or an Indian State. Common economic problems would have far greater value in the line of alignment so far as association of provinces and States are concerned, than any general consideration of the class to which each unit belongs. Geographically, ethnologically, and by common economic interests, there is likely to be a greater degree of agreement between the Province of Madras and the States of Mysore and Travancore, than between an extreme maritime State like Travancore and the northernmost inland State of Kashmere.

WEIGHTAGE—SAME AS 'EQUALITY' IN FEDERATIONS

Again, the idea that Federations have never recognised the principle of weightage, can easily be proved to be inaccurate by any one who has bestowed thought on the subject. It is true that the word 'weightage' has not been used in many of the text-books and that it is a phraseology peculiar to Indian politics; but what is the underlying meaning of the principle of equality of representation? If New York, with its ten million people, has two Senators in the Senate of the U.S.A., and the State of Nevada, with little more than 18,000, has the same representation, what else is it but the principle of weightage being applied to Nevada as against

New York? If Pennsylvania has two Senators, and the six States of New England, which have less population than Pennsylvania, have 12 Senators, what else is it except the principle of weightage applied to the New England States? If Lower Canada has the same number of members—24—as Upper Canada, and if the combined maritime States of Nova Scotia and New Brunswick are given equality of representation with the two Canadian Provinces, what again is it but that the principle of weightage has been applied in these cases? If these are anomalies—such anomalies can be multiplied from every Federation known to history. The representation of Prussia was specifically limited, and it did not have the number of members which it was entitled to by population, so that it may not play a dominant part in the affairs of the Federation. It seems therefore from a consideration of pure theoretical principles, that a claim for weightage by any unit of the Federation cannot be dismissed as opposed to fundamental principles.

‘EQUALITY’ LEADS TO ‘WEIGHTAGE’

An examination of the question from another point of view will lead us to the same conclusion. It has been seen that so far as the Upper House is concerned, the federating units are in practically all cases given equality of representation. Now, the federating units, so far as British India is concerned, will be only nine or ten provinces even if the principle of creating new administrative areas is given effect to. The number of States are legion. Excluding those petty estates, the States that are original members of the Chamber of Princes are 109; and there are other States which have kept out of the Chamber, and some which send representatives to the Chamber by Groups. Even so, the federating units of any considerable size among the States which are distinct and whose individuality has to be recognised, will be over 100. If equality of representation was claimed for each one of these States, along with Indian provinces, in an upper chamber, the result could easily be seen. It will be a case, not of British India devouring the States, but of the States devouring British India; and yet those who merely rely on forms and precedents, cannot escape from the

conclusion that it is a perfectly logical demand. It is from this point of view that the demand for State representation of about 50 per cent in the upper house has to be considered.

ACTUAL COMPROMISE

After a great deal of negotiation, the large consensus of opinion seems to favour the idea that Indian States taken together, may have one-third of the seats in the lower house, and 40 per cent of the seats in the upper house. This is but a compromise—and as all compromises are—difficult to justify on any logical basis. At one stage, the claim of the States was for equality of representation as between British India and Indian States in the upper house, and proportionality in the lower house. But some of the British Indian representatives felt that that proportion would give the States a very dominating voice in the deliberations of the upper house and that it was far better to accept a slight weightage in the lower house than to agree to such dominating influence in the Senate.

THE FUTURE?

There is one consideration at least which emerges from a study of the history of various federations, and which must incline us to soften our judgment a little, when we are far too much carried away by the idea, that States have been given too much importance, or that one section has been given too much representation to the detriment or disadvantage of another section. It is impossible to foresee at the present moment how the institution will work in the years to come and what will be the result of representations based on such percentages. Advocates of equality of representation may indeed have stressed their case far too much and may have relied on numbers in the federation. The history of Federations proves, that, after all, this principle of weightage or equality of representation, has not been of very great efficacy in guaranteeing individual States their right place in the constitution. Within a few years after the formation of the North Germanic Federation, where the same principle was accepted and worked upon, and where the population basis

was not accepted with reference to such a large State as Prussia, the dominant influence of that single State and of its Kaiser, began to be felt in the whole of the German Republic. The Bundesrat, which was the second chamber in the Germanic Federation, and in which Prussia was not given its adequate representation, very soon found itself virtually the slave of that single State. At the time of the formation of the Federation, the feeling against Prussia and of its ruler the Kaiser, was so great, lest the independence of Sovereign States like Bavaria and Wurtemberg would be jeopardised, that when Bismarck tried to give the Kaiser the title 'Kaiser von Deutsch' (Emperor of Germany) it was rejected and the phrase 'Deutsch Kaiser' (German Emperor) was accepted. That is to say, the King of Prussia was not the 'Emperor of Germany' but the 'German Emperor'. But the years that followed by, proved how mistaken were those who laid all their hopes on the subordination of Prussia and on their importance being recognised by the number of delegates that they could send to the Federal Legislature.

The history of the United States only emphasises this moral. In all crises, economic or otherwise, whenever the American Senate has to play a great part in international affairs, it is not the isolated States in the back woods that have the dominant voice, but it is New York, Chicago, Philadelphia, Washington and such other States that carry the assemblies with them. The Senate tries to get their cooperation and recognises the value of their assent to its proposals. Ultimately, therefore, power will inhere in spite of constitutional subtleties and the statutory grant of equality of votes, in those areas and among those people who are in a position to contribute most to the welfare, the dignity, and the greatness of a federation. So it will be with India. Prophecy is dangerous and not altogether desirable at the present juncture, and therefore without forecasting whether it will be British Indian Provinces or Indian States, or in particular any one of either category that will really count in an Indian Federation, one may safely assert that after all, weightage or no weightage, some units will have more influence than others; some delegates carry more weight than others, even in an Indian Federation.

REPRESENTATION IN LEGISLATURES

If British India and States were to have fixed proportions in these two legislatures, the question then arises as to how the members have to be elected to either of the houses. Here again, a fundamental distinction has to be drawn between British India and Indian States. Not only are the States different from British Indian Provinces, having sovereign status as against Indian Provinces, but the internal administration of each State differs very considerably. In other Federations, there have been attempts made to equalise the status of the various States, to bring about the same normal conditions of administration in the federating units, before the federation has been formed. It has been laid down in these constitutions, that the federating units must have the same system of government without distinction as between State and State. The constitution of the U.S.A. provides by section 4 of Article 4 that the United States shall guarantee to every State in the Union a republican form of Government. The Canadian and Australian federations guaranteed the then existing democratic system of government to the States till they were further modified by the Legislature according to the provisions contained in the Statute which formed the Federation. The new German Federation of 1919 born out of the stress and strain of the War, out of all those feuds that ended in the Great War, after the miseries of millions of people who went through the valley of death during the War, took note of these examples and provided by its constitution—Article 17, that each of the federating States must have a republican form of constitution. When you therefore hear of the possibility of the Kaiser or some heir of the Kaiser coming back to the throne of Germany, when you hear of the possibility of a monarchical form of government being established in Germany, you must realise the opposition that will immediately be raised, because fundamentally it violates the conditions which have been agreed to by all the German people after 1919. Presuss, that great German statesman who was responsible for drafting the constitution, saw the evil that Germany was suffering from and that the Great War was a result of that monarchical form

of government which was enthroned in Germany, and to which the people, highly educated and democratically inclined though they were, subjected themselves so readily. There is something in the German blood, as it is alleged there is something in the Indian blood, which makes for worship of sovereigns and monarchs. And it was to guard themselves against that danger of a reversion back to a monarchical system of government, that those men who drew up the constitution made this wise and ineradicable provision that a republican form of government must be the only form of government in every federating unit of the German Federation. But—and there is a big but—where India is concerned, one can easily realise how a proposal of this kind, put forward by any of the British Indian delegates would have exploded the conference in no time. It was impossible to suggest to their Highnesses, however sweetly they might have spoken at the conference, and however socially they might have mixed with us, that their States must adopt a republican form of government. At any rate no British Indian delegate suggested it and we have therefore the anomaly that in the Indian Federation, you have not got identical systems of government among the federating units and that the constitution does not (wisely, may I say) propose to make that a condition precedent for the federation. The result of this, we have to examine in relation to representation in the legislature.

NATURE OF REPRESENTATIVES

The limitations imposed by these considerations will explain, if it does not justify, the proposals that have been made regarding representation in the federal legislature. So far as the lower house is concerned, British Indian provinces will send representatives from as wide territorial electorates as possible, the electors being enfranchised on certain specific qualifications like the ownership of property or an education qualification. So far as the Senate is concerned, it is suggested that provincial legislatures should elect a certain number of representatives to the federal Senate. The States, on the other hand, stated that the method of sending representatives from their areas to these two houses should be entirely

left to their discretion, and that no provision should be made in the constitution prescribing any particular form of electorate. Some of the States suggested that representatives in either house would merely be delegates from the Government of the State, and that popular opinion in the State will have little voice in the choice of these delegates. Other States who were more farseeing, suggested that in some form or another, public opinion will be ascertained in the choice of some of these representatives. But in either case, it was made perfectly clear that it was not a matter in which either British India or the British Government could dictate, and that it must be left to the governments of Indian States to decide for themselves which was the best course.

AN ANOMALY

It must be candidly confessed that there is a certain element of anomaly in a legislature being composed of widely differing groups of representatives. The lower house would have representatives from British India elected on a fairly wide popular franchise, forming themselves into party groups, and trying to have a common policy based on party alignments. The representatives from States to the same house will be mere delegates from each of the State Governments, and as delegates have necessarily to conform themselves to instructions which they receive from time to time, in theory at any rate, it looks extremely unlikely that any of them can ally themselves with political groups in the British Indian side of the legislature. Similarly in the upper house, the British Indian representatives will be the chosen of the chosen, but the State representatives would continue to be delegates of their Governments. But formidable as the indictment against this anomalous system of representation may seem to be, it is fairly clear that in actual practice, the disadvantage may not be as great as it appears at first sight. In the first place, States would find it extremely difficult, and the difficulty will grow in course of time, to send representatives to the lower house who are mere delegates of governments. It is not at all unlikely, and indeed one feels certain, that some States at least will allow such representative assemblies as exist in their areas to choose either all or some at least of their

representatives to the lower house. The example, aided as it will be powerfully by the influence which in the legislature British Indian representatives will undoubtedly have on the delegate-representatives of Indian States, would spread to other States, till at no very distant time, one need not hope in vain that representatives to the lower chamber from all the States would be elected by State legislatures, if not by the people themselves. It is possible that for a considerable time, representatives from the States to the upper house will be nominated by the respective Governments. Such are the concessions that have to be necessarily made, if facts are to be faced, if such widely differing units have to be brought together in a common federation.

THE UPPER CHAMBER

With reference to the upper house, it is not likely that the States for many years to come, will give up the principle of Government delegates. The representatives to the upper house from British India will be representatives chosen by the various Provincial Legislatures on the system of the single transferable vote.

WHY INDIRECT ELECTION ?

There have been two or three considerations which weighed in accepting a principle which on the face of it looks rather reactionary. The first and perhaps not the least important of these is that at least in the upper house, you do away with the principle of the representation of various communities, as such, on the basis of minorities and communities. That consideration weighed with some of the delegates, and why they came to this decision was, not that they did not want the minorities to be represented, but that the system of election by the single transferable vote will be such that their place will be secured without resorting to an avowedly communal electorate or a joint electorate with reservation of seats for minorities. It has been ascertained that on the basis of election by proportional representation from the provincial legislatures to the federal house, all important minorities will have the right to send representatives more or less proportionate to their numbers.

But a reason of far greater weight was the desire that

ultimately, whatever power may be given to the second chamber in the federal legislature, the centre of gravity must shift to the lower house. Numbers tell in all matters; and numbers will tell, when a huge electorate polls in an election to the lower house. The will of the people will be more clearly ascertained in the lower house than in the upper house; and theoretical considerations notwithstanding, statutory provisions apart, ultimately the lower house will be the house which will be the dominant partner in the federal legislature.

For that purpose, it seems desirable that the upper chamber should be indirectly elected rather than directly elected. If both houses were to be directly elected, there are one or two possibilities: You must start by giving a narrow franchise to the upper house, and a wide franchise to the lower house. But it is well known that franchise qualifications cannot stop short at any particular stage; you cannot put a dam against the on-rush of that lowering of franchise qualifications which is inevitable, howsoever high you may put it at the start. The high franchise qualification for the upper house would become lower and lower till it has become absolutely identical with the franchise of the lower house. That has been the experience in other countries. Federation began on the principle stated above; till 1913 the U.S.A. Senate was represented by representatives sent by the State legislatures but by a constitutional amendment in that year, they were elected on the basis of adult franchise by the whole population. Now, if you have two different legislatures constituted practically by the same electors, which legislature can be said to voice forth the will of the people? Is it the first or is it the second? Does the member who speaks in the lower house represent exactly the view-point of the public, or is it the member who speaks in the upper house? These are conflicts which are unavoidable, and which would make it very difficult for the centre of gravity to shift to the lower house, which must be the concern of those who believe in democracy and in the weight of numbers. That was one of the reasons why some at any rate agreed to the principle of indirect representation by the provincial legislatures to the federal upper house.

After all, they will be the chosen of the chosen ; they will be the select of the select. A further consideration which was urged was this : that in the stress and strain which overtakes candidates who have to go to popular elections—it may not be possible to get men of advanced age who have reached a certain dignity of years to stand for such popular election. That is not a reflection on the electorate, but is perhaps a reflection on the physical powers at any rate of the candidate who stands for the election—not a trifling matter when age begins to tell and even motor car journeys in country roads cease to be a pleasure. These were the considerations which led to the adoption of the principle that so far as the upper house of British India was concerned, it would be constituted on the basis of indirect election from the provincial legislatures.

STATE SUBJECTS

There is one observation which I should like to make, though it is not relevant to my theme. The position of States subjects in various Indian States, their civic rights and the influence that they may exercise in the administration of the State, have been matters of great concern not merely to them but to every thoughtful citizen across the border in British India. Having had opportunities of knowing something of their condition, of realising how in some States their position indeed is no worse than that of British Indian subjects, and may even possibly be better ; but that in other States there is no parallel to the position which they occupy—one cannot feel unconcerned over this question. But the limitations of a British Indian trying directly to interfere in such matters particularly at a Round Table Conference are so obvious, that they need not be expatiated upon. It is true that strong observations could be made about the unsatisfactory position of the subjects of some of the Indian States. But one ventures to think that it is not the most cantankerous advocate that is always the successful pleader of apparently hopeless causes. In a matter of such great concern and of unequalled complexity, one feels that a policy of indirect assistance may perhaps be of greater benefit to the State subjects than any other policy. It is the hope of many

British Indians who have partaken in the framing of an All-India Federation, that the best, the surest and perhaps the only way of ensuring that State subjects have in the very near future those fundamental civic rights, those opportunities for honourable association with the administration of their areas, which they and we equally hope for, is (while apparently ignoring the present position of Indian States subjects) by pressing on with firmness, with all possible speed, and with strong faith, the bringing into existence of an all-India federation. The future is in the lap of the gods. It may be that out of zeal, enthusiasm, or sheer lack of foresight, mistakes have been made; miscalculations have been inevitable; but it may also be that those evolutionary forces which work unremittingly, organised, but not altogether, by human endeavour, may yet bring about that quicker and surer realisation of our hopes than we are now able to see and take note of.

THE QUESTION OF MINORITIES

There is one more question which I would like to avoid but which I would not be justified in doing so—and that is the vexed question of the representation of minorities. Feeling has been intensely stirred in this country not merely among active politicians, but if I might be permitted to say so, even among sober academicians, over the question of the representation of minorities. I remember very vividly a great academic professor declaiming against any idea of representation of minorities as such, pointing out the example of the League of Nations, as though the League has shown the way how these problems are to be solved.

THE LEAGUE PRECEDENT

The precedent of the League of Nations has no sort of application to conditions such as those with which we are dealing. The League of Nations recognises certain minorities in those States to which the right of freedom has been given after the Great War. Those minorities are generally composed of communities which are not really the subjects of the country—men who are not part and parcel of the country; men who do not even wish to call themselves the

nationals of the country. Such persons form in very many cases the minorities. In Poland it is the German that forms the minority; in Zechoslovakia again, it is the German who forms the minority. And all that the League of Nations has attempted to do is to see that these minorities should have some human rights. A right to practise their own religion, a right to be educated in their own language and similar fundamental rights, which are of universal application—and not civic rights as we understand the word—is all that has been guaranteed by the League to them. In fact, you will find in all post-War constitutions, a formidable array of what has been termed fundamental rights. Many of these rights have been drawn up merely for the protection of minorities and the League procedure is very curious. The League of Nations is not the palladium of justice for the minorities as such. For a minority to approach the League it can only be done through a member of the League who can take up the cause of a minority of any country, and place it for the consideration of the Minorities Committee of the League of Nations. It will be easily understood that no sovereign State will be eager to take up the cause of a certain minority in another sovereign State as it will lay itself open to serious diplomatic complications. So that, the League of Nations has rarely been able (and I have studied the history for the last ten years) to afford justice on those fundamental rights to the minorities.

THE INDIAN PROBLEM

But the question of minorities is very different in this country. We are thinking, not of safeguarding religion, of safeguarding education, but of giving them a status, of making them co-operators in the task of government, of giving them that position where they will feel that they are dignified co-operators in the entire task of administration. It seems therefore that the policy of wisdom lies in recognising this fundamental difference between the minority problem in India where they all form part of one national whole; and the minorities problem of European countries where the minorities can never be absorbed into the nationality of the country.

EQUALITY AND FRATERNITY

Democracy, as is well known, is founded on the triple slogan of liberty, equality and fraternity. Our emphasis as a subject nation, the emphasis of British India as a subject country, has necessarily been on the first of these essential constituents of democracy, and it has been rightly so; but the fact remains nevertheless that equality of opportunity and fraternity count as much; and that those who would build an edifice for India ought to bear this carefully in mind. That great politician and statesman whose triumph in the handling of the public affairs of his country has eclipsed his great name and fame as a political thinker and writer—President Masaryk of Zechoslovakia observes: 'Democracy is grounded upon humanity; it is the government of all, for all; not of rulers and ruled, but of an administration, self-government and the co-ordination of all state creative forces'. It is such co-ordination that is sought to be brought about by the representation of those specific minorities whose sense of apprehension makes them feel that they will have no place in the constructive task of the governance of the country except by special representation.

A NATIONAL SOLUTION

I do not commit myself to the particular kind of representation that has been given according to the present proposals for such minorities. I am content to express my opinion that so long as apprehensions are really felt and justly entertained, it is the part of wisdom to remove such apprehensions by methods which may be neither ideal nor classic, but which will nevertheless be effective in promoting good will and thereby make for a consolidated and united nation. The solution of the question may not be of the ideal type, but the foundation for a more generous and tolerant attitude has been laid by the removal of that nervousness which some minorities have hitherto felt. Prophecy is dangerous in an age of flux. But in a country where tolerance has been claimed to be one of the great virtues of the past, one must realise that political bonds of affection are cemented not merely by bare legal enactments, but also by generous treatment of human questions.

Without in anywise being chauvinistic, one may state that in the new India, the approach to a perplexing question—the question of minorities—has been of a new and an essentially national character.

III

RELATIVE POWERS OF THE TWO HOUSES

For an understanding of the relative powers of the two houses, one must remember the peculiar reasons for which a Senate or upper house has been designed, particularly in a federation. It has been pointed out already that the principle of State sovereignty and State individuality and distinctiveness, has been very largely responsible for the creation of a chamber in which States are represented as separate entities. Therefore, to a certain extent, a federal second chamber differs in intents and purposes from second chambers in unitary States. But even the originators of the first idea of a federal second chamber, the framers of the American constitution, admitted that such a chamber would do the same work that was expected of a revising chamber in a unitary State. Madison, one of the protagonists of the constitution of the U.S.A. in fact declared in clear and unmistakable terms the objects he had in proposing the constitution of such a second chamber. 'If the prime purpose of the American constitution was the establishment of liberty, and liberty meant the free development of various, diverse interests, then Madison foresaw that a clash of such interests was inevitable, and that the force and impact of that clash should, as far as possible, be mitigated by a second chamber. 'There will be creditors and debtors, farmers, merchants and manufacturers. There will be particularly the distinction of rich and poor' said Madison. 'We cannot however be regarded even at this time as one homogeneous mass, in which everything that affects a part will affect in the same manner the whole. In framing a system which we wish to last for ages, we should not lose sight of the change which ages will produce. An increase of population will of necessity increase the proportion of those who will labour under all the hardships of life and sigh for an equal distribution of its blessings. These must necessarily out-

number those who are placed above the feeling of indigence. According to the laws of suffrage, the power will slide into the hands of the farmer. No agrarian attempts have yet been made in this country, but symptoms of a lively spirit have sufficiently appeared in certain quarters to give notice of the future danger. How is the danger to be guarded against on republican principles? How is the danger of interested coalition to oppress the minorities to be guarded against— Among other means, by the establishment of a body in the government sufficiently respectable for its wisdom and virtue to aid in such emergencies the preponderance of justice by throwing its weight with the oppressed'. Holding these views naturally, the framers of the American constitution gave the State very wide powers. All legislative powers were vested equally in the Senate and the House of Representatives. All bills for raising revenue originated in the House of Representatives, but the Senate may propose or concur with amendments as on other bills. There were certain other special powers conferred on the Senate of the United States of America, such as the power to approve treaties made with foreign powers by the executive, and the power in some special cases of making appointments. It has been suggested that in the Indian federation, the same principle may be applied. The general view has been, that neither of the chambers of the federal legislature should be placed in a position of legal subordination to the other. The two chambers are intended to be complementary to each other, each representing somewhat different, but not necessarily antagonistic aspects of the federation as a whole. It was clearly realised that absolute equality between the two chambers of a bicameral legislature was no doubt unattainable, and if it was attainable, might well result in perpetual deadlock; and there was no doubt either, that notwithstanding the provisions of any constitution, the evolution of political development will inevitably result in course of time in placing the centre of gravity in one chamber. But so far as the actual provisions of the constitution are concerned, the conclusion was arrived at that there was no justification for endowing one chamber at the outset with legislative powers which are denied to the other. There will be no prohibition against bills emanating from either chamber,

against the power to amend or reject a bill, and the need for the acceptance of a measure by both chambers before it can become law. There was however one exception following the analogy of other countries—the right of initiating money bills vests in the lower chamber alone.

JURISDICTION OF LEGISLATURE

Having traced the relationship of the two houses of the Federal Legislature, I may shortly deal with those subjects of common concern which will fall within the competence and jurisdiction of the federal administration. Communications including railways, aircrafts and inland waterways, shipping and navigation, lighthouses, posts, telegraphs and trunk telephones and wireless institutions, customs and salt, currency and coinage, the public debt of federal India, commerce including banking and insurance, trading companies and other associations, geological and botanical survey of India, inventions, designs and copyright; emigration and immigration, the survey of India, meteorology, federal services and a few other subjects come within the purview of the federal legislature. With reference to some of them, it is provided that only policy and legislation should be federal; with reference to others, policy, legislation and administration would be federal. The distinction is important and carries with it far-reaching consequences. Where merely policy and legislation has been federalised, the States have agreed that the federal legislature shall dictate the policy to be applied and that the legislation passed on the subject shall be binding on all the States; but the administrative part in connection with those subjects will be exercised as at present by the States. So far as they continue to exercise those powers, they will do so in conformity with a policy jointly determined and with regulations jointly formulated. This distinction has been arrived at as a matter of necessity, and because the States desired that there should be the minimum amount of disturbance in the practical arrangements for administering the subjects in the States. As we shall see later in discussing the administrative arrangements of the federation, this attitude of the States involves special arrangements not altogether unique in federal

constitutions, even in relation to those subjects which are completely federal:

CENTRAL SUBJECTS

The enumeration of the subjects which have been federalised either wholly or for limited purposes, must bring home to any one that there are very important subjects of common concern to the whole of India which have not been included in the above list. Civil laws, criminal law and criminal procedure, have not been embodied in the list of federal subjects. The reason is obvious. The representatives of Indian States were found unwilling to extend or amplify the list of subjects that have been mentioned above, and in particular, did not agree to the federation making laws either regarding civil rights or criminal liabilities which will have automatic operation in their States. In practice, in some States, there is really no difference between the laws prevailing in British India on these subjects and the laws in such States. The Indian Penal Code has been applied *in toto* in most of the Indian States; so has the Code of Criminal Procedure found a place in the legislative system of many of the well-organized Indian States. Many of the civil laws have been bodily transposed into the statute-book of big and small Indian States. There have been rare instances of variation in these respects. But even so, there has not been found sufficient response from State delegates to the suggestion that these subjects should be made federal. What then should become of those subjects which are at least of common concern to British India?

PROVINCIAL OR CENTRAL SUBJECTS

There was one school of thought among British Indians which felt that subjects which were not federal should automatically become provincial subjects. Obsessed with the idea that provincial autonomy in the amplest form would somehow or other give great status and dignity to provincial areas, hankering for that sovereign status which according to old theories federating units normally possess before entering into the federation, there were some who insisted that such vital subjects as civil and criminal laws should be entirely left to the control of provincial legislatures.

Another school of thought, however, urged that great uniformity had been reached in the legislative development of the country by the fact that for over 70 years, a central agency had passed laws on subjects which affected the whole of the population in British India equally. The great codes, beginning with the Indian Penal Code for which that master mind Macaulay was mainly responsible, had brought about a state of uniformity in the country which it would be extremely unwise now to attempt to disintegrate in the name of provincial autonomy. The Code of Civil Procedure had given a certain amount of uniformity in the possession law administered in all parts of British India; the Transfer of Property Act had made it easy to recognise rights and liabilities with reference to the possession of property throughout British India which it would be absolutely fatal to destroy. The Indian Evidence Act had again given a system of assessing and evaluating evidence on a uniform basis in all courts of the land. The Criminal Procedure had similarly tried to set up common canons with reference to the trial of criminal cases. Such being the case, those decades of work entailing great labour which had produced this uniformity, should not be lightly done away with; and measures adopted which will bring about chaos in the application of civil and criminal laws in the country, would be a calamity according to some at least of the British Indian politicians.

THE NATURAL RESULT

These considerations inevitably led to a novel arrangement being proposed, an arrangement which it must be admitted, finds no parallel in constitutional precedents, but which again the peculiar conditions of India have obviously necessitated. A certain set of subjects had to be described as 'central' subjects as opposed to 'federal' subjects on the one hand and 'provincial' subjects on the other. These central subjects must be legislated upon by a central legislature which represented British India alone. That was the only way by which uniformity could be secured in those provinces which valued such uniformity and which were not inclined to give up the advantages thereof.

THE CENTRAL LEGISLATURE

The question then arises how the central legislature is to be composed, and whether there ought to be, apart from elections to a federal legislature, a set of separate elections for a central legislature which will deal with these problems. One has only to state this alternative, to realise how cumbrous, costly and unnecessary such a double system of election would be. The more reasonable course would be to form the British Indian section of the federal legislature into a central legislature for the purpose of discussing subjects of common concern for British India alone, which may be detailed in a separate schedule and called 'Central' subjects. This is the expediency which has been accepted. One may refer, however, to two alternatives which were proposed but were found not acceptable to many British Indians. One was to allow these subjects to be discussed by the full federal legislature, and the laws on them would then be passed by the whole body, but their application would be limited only to British Indian provinces. This process was found not agreeable on the simple ground, that it would be not only anomalous but highly undesirable to give the power to a certain number of representatives in the legislature to share in making laws which would not be applicable to them. A second suggestion was to follow as closely as possible the analogy which now prevails in the House of Commons, when legislation relating to Scotland is taken up. Such legislation is generally referred to a committee called the Scottish Committee, which by convention is composed mostly of Scotch members of Parliament. After the proposed bill is examined by this committee, it is remitted for the consideration of the full house; but again by an un-written convention, the discussion is generally confined in the open house only to those members who are representatives of Scotland. It must however be conceded that in theory it is open to every member of the House to share in such legislation, and that in practice on more than one occasion, members who were neither Scotch nor represented Scottish constituencies have been known to take part in these measures.

The only alternative therefore is to apply what has been

termed the 'in and out' principle, whereby in matters relating to the central subjects, the State representatives will walk out, and will walk in again when federal subjects proper are taken up for consideration by the legislature.

A minor anomaly, perhaps inevitable, in this arrangement will be that if the President of the legislature happens to be a representative of one of the States, he will still continue to preside over the British Indian section of the legislature. Another anomaly, but of far greater significance, arises out of the composition and powers of the federal executive which we shall proceed to consider.

THE FEDERAL EXECUTIVE

We have seen that a federation involves a legislature, an executive and a judiciary. The legislature having laid down general rules and principles which must regulate the society, the executive seeks to apply those rules or principles in particular cases. The judiciary determines whether the executive, in exercising its power, follows the principles laid down by the legislature. Earlier constitutional writers like the French Montesquieu and the English Blackstone, emphasised the need for the separation of these three powers and the vesting of them in bodies mutually exclusive of each other. It stands to common sense that the man who makes laws, should not himself interpret them; and the person who gives orders should not himself be the judge as to whether those orders have been carried out properly or not. Montesquieu in his famous work says:

'When the legislative and executive powers are united in the same person or body, there can be no liberty because apprehensions may arise lest the same monarch or Senate should enact tyrannical laws and enforce them in a tyrannical manner. Were the power of judging joined with the legislator, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor'.

The acceptance of these principles was understood at the time to involve a complete separation of personnel which can be vested with these various powers. If legislative and executive

functions were to be vested in different bodies, if the legislator should have no sort of connection with the administrator, the necessary corollary of a rigid adherence to this provision was the agreement which was arrived at in the federation of the United States. No member of the executive can form a member of the legislature. The executive in America is to be outside the legislature. The State Secretaries are not members of either house. They have no right to appear in those bodies, to support by argument bills which on their recommendation the President may send to the legislature for consideration, and to defend themselves against criticism in either house. The president himself, the supreme executive head of the United States, is outside the legislative system. He can only send messages to the Congress—messages which can be taken note of, or as in the very recent instance regarding the independence of the Phillipine Islands, completely ignored by the Congress. Madison, in his *Federalist*, not merely defends, but actively advocates this complete dissociation of the executive from the legislature on the principle laid down by Montesquieu and Blackstone. One may indeed wonder how the system can work in America. So far has been the advance in public opinion regarding the impossibility and undesirability of keeping the legislature and the executive absolutely separate entities. The fact is that the development of the party system in America, those huge forces which array themselves on either side in the Congress, the House of Representatives and the Senate, which support the President and executive chosen by him on the one hand, and oppose them on the other;—this party system forms the bridge between the legislature and the executive and tones down the harshness and often the impossibility of a position which arises on account of the strict and logical application of theoretical principles.

CONCURRENT POWERS

It has been found by all framers of later constitutions, that a parliamentary executive as opposed to the non-parliamentary and irremovable executive such as that which exists in the United States, combines in itself advantages of a pecu-

legislature. Where an executive is drawn from the parliament itself, is made responsible to parliament and is subject to removal from office by a vote of parliament, the danger foreseen by Montesquieu and Madison of a combination of the legislative and executive functions in one body does not seriously arise. It is perfectly true that under present conditions, there is often an overlapping of functions between the legislature, the executive and the judiciary. In some countries at least, the legislature sometimes acts as an executive, as when the American Senate is required to confirm the nominations of the President with respect to particular offices. In some cases it has in theory the power of adjudication like the House of Lords. The judiciary again does not merely adjudicate on laws made by the legislature. That well understood phrase 'judge made law' as opposed to codified law, accurately describes a feature of judicial administration involving the making of laws which is prevalent in most countries. Executives again have, under the growing stress of legislative business, been given larger powers in many countries of making laws. A busy parliament harassed by work which accumulates with ferocious rapidity and unable properly to discharge its functions if it were to deal with every meticulous detail of a proposed legislation, finds it convenient to draw up a set of broad principles and embody them in laws and leaves the greater bulk of detailed legislation to what has been termed the 'rule-making powers' of the executive. Into the protests that have been made from time to time on excessive rule-making powers of the executive and the objections to such large powers, we need not enter at present. This overlapping of functions necessitates, so far as executives are concerned at any rate, that they should form part of the legislature and be amenable to the control of the legislature.

The phrase 'responsible government' or 'responsible executive' merely means that the executive should have the confidence of the legislature. That confidence can only be enjoyed so long as the executive carries out the will of the legislature. The legislature therefore secures, by its control of the executive, the means whereby executive acts will be in conformity with the intentions of the legislature.

In suggesting an executive for an all-India federation, the proposal has been accepted of a system of parliamentary and removable executive responsible to the legislature, and acting on its advice and under its guidance. How far legislatures really control their executives, and how far they are in their turn guided by the executives, is a vast question which depends not on constitutional provisions but on the action and inter-action of personalities.

APPOINTMENT OF MINISTERS

A parliamentary executive is generally formed by the head of the administration—the King or his Viceroy—appointing the members. The question arose at a very early stage in considering an executive for the all-India Federation, as to how these appointments were to be made. There were, here again, unfortunately two views expressed—one which suggested that the Viceroy should have complete power to nominate individual members of the Cabinet; the other which insisted that the Viceroy should summon a Prime Minister, generally the leader of the dominant party or largest group in the legislature, and ask him to name his colleagues. The reason for the former view was the hope entertained by some that under such a system a representation of the different communities in the executive may be assured. This aspect of the question we may consider later, but it was at last generally agreed that the principle prevailing in the British Parliament of summoning a prime minister to form his cabinet should be acted upon. This raises the important issue of joint responsibility of the cabinet, which is the basis of the English cabinet system. Nothing has contributed more to the success of the party system or to the influence of a legislature than the doctrine of joint responsibility. If Ministers are isolated individuals, having no common purpose, acting under no definite programme which was equally binding on them all, chaos was bound to overtake the executive and ultimately the legislature. If instead of allowing a prime minister to choose his colleagues, either the head of the administration, as the Viceroy for instance in the case of India, chooses his colleagues, or the party dictates who his colleagues should be, it may well nigh be impossible

to get together a group of men who are of one mind, loyal to each other and to their chief, and act with one purpose in those high affairs of State which have been entrusted to their discretion. If individuals are sorted out either from a single party or from various groups and asked to form a cabinet, the process would really be reversed and joint policies will have to be formulated after the cabinet is brought together and individuals collected for the purpose. Such an arrangement will virtually mean the lowering of the prestige of the prime minister and his helplessness to adjust differences of opinion among his colleagues. Morley in his biography of Walpole describes the cabinet system of England as follows :—

‘The principal features of our system of Cabinet government to-day are four. The first is the doctrine of collective responsibility. The second mark is that the Cabinet is answerable immediately to the majority of the House of Commons and ultimately to the electors whose will creates that majority. Third, the cabinet is except under uncommon peculiar and transitory circumstances, selected exclusively from one party. Fourth, the prime minister is the keystone of the cabinet arch. Although in cabinet, all its members stand on an equal footing, speak with equal voice and on the rare occasions when a division is taken, are counted on the fraternal principle of one man, one vote, yet the head of the cabinet is *primus inter pares* and occupies a position of exceptional and peculiar superiority. The task of forming cabinet is one of the most difficult that any prime minister has to face at the start of his career. There are the various considerations which have to be borne in mind. Certain people must be rewarded for years of loyal party work. They have attended all conferences, divisions and committees, have spoken in every constituency, have never criticised leaders or given trouble to the whips. They must now be honoured or rewarded. One way out of the embarrassment is to give such men the compensation of a Baronetcy or Peerage. It is worth while remembering this consideration also when we deprecate the practice of conferring titles in this country. At the time of the formation of a cabinet, human nature being the same everywhere, there is most active interest evinced

and the most tremendous pressure brought to bear on the prime minister and on those who may advise him. The tailcoats and top hats who assume a peculiar importance in every country on such occasions are full of their frenetic advice. It was the Marquess of Salisbury who is reported to have said on one famous occasion when he had to form his cabinet that the Carlton Club, the political club of the Conservatives, resembled nothing so much at the moment, as the zoological gardens at feeding time. The prime minister in fact is no Cæsar. He is not an unchallengeable oracle. His views are not final.'

In practice, the prime minister has not got virtually the freedom of choice which may be assured to him legally. It is the experience of every prime minister that at least with reference to some appointments, it is so obvious that he has no alternative. In fact, cases are not wanting where the prime minister for reasons of State or of party, has been forced to choose a colleague whom, he for personal reasons would well have avoided. There is the classic instance of Gladstone who chose Chamberlain as his colleague in the Cabinet, though there was not the most cordial feeling prevailing between them. There was the case of the Marquess of Salisbury as Prime Minister, choosing that erratic genius Lord Randolph Churchill as his colleague and in fact giving him the key position of leader of the House of Commons. There are practical limitations imposed by such considerations as I have indicated above. But both in theory, and so far as the head of the State is concerned, in practice, a convention is well established in England and other parliamentary countries that the prime minister should have complete freedom of choice in calling together those members who will form his colleagues in the Cabinet.

In India particularly, the cabinet system based on joint responsibility is the only system that can work properly and carry out the ideals that we have in view in framing the constitution. It is more than possible, taking a bird's-eye view of present conditions, of the frame of the constitution and the method of election to the legislature—that in the few years at any rate, there will not be two clearly defined parties in the federal legislature. There may

groups, with all the disadvantages of group politics, with no clear cut divisions of opinion running horizontally, and in such a state of affairs, individuals picked from various groups by the Governor-General rather than by a prime minister, would find it extremely difficult to present a united front to the legislature and to carry through measures by the majority vote of the house. It is true that assumptions like the foregoing involve that the prime minister may not belong to that group which commands an absolute majority in the house. It will be his concern to see that individuals are selected from various groups, so that the total strength of the cabinet in the legislature will be sufficient to ensure the passage of all governmental legislation. But the important factor is that the individuals would all be persons who are more or less agreed on certain definite principles, and above all who are loyal to their chief. The principle of loyalty to a prime minister on the part of his colleagues, is of the very essence of joint responsibility of cabinets.

The relationship of the prime minister to the other members of his cabinet—the question whether he will have such personal ascendancy as to be able to carry his colleagues with him on essential questions of policy, do not relate really to the theory of politics, but are matters concerning the administration of cabinets. It is unnecessary to examine at any great length what the position of the future prime minister will be and of his colleagues. Much will depend upon personality; much more on that sense of joint discipline and loyalty which those chosen as colleagues will show; but of one fact we may be certain, that the Governor-General should choose one person as the prime minister and make him virtually responsible for the choice of his colleagues.

COMMUNAL REPRESENTATION

Let me now refer to a question which has occupied some considerable attention of the public mind and on which again various extravagant and conflicting claims have been advanced. It has been suggested that the cabinet should be representative of various communities. The history of

communal claims and of attempts at communal adjustments in India is well known. The Muslim Conference, in their now famous 14 points, suggested as one of the fundamentals of the constitution that it should be provided by statute if possible, that there should be a certain minimum number of Muslim ministers in the central cabinet. Other communities have advanced similar claims. The Sikhs have put forward a claim for their indefeasible right of having members of their community in the provincial cabinet and have latterly expanded that claim to a seat in the central government. Students of constitutional history must reject these claims without any hesitation if they are advanced as statutory or quasi-statutory rights. All that has been said about the theory of joint responsibility of cabinets and the freedom of choice that must be ensured to a prime minister forming his cabinet, militates directly against the position that such choice should be circumscribed by the necessary inclusion of individuals of certain communities, whatsoever their politics and policies may be. A cabinet formed on such compulsory lines cannot be sustained in office for any considerable time, and must break down by the sheer fact of its inappropriateness.

But these considerations are not arguments against a practice or a convention growing up whereby a prime minister turning his attention round and having regard to the principle of joint responsibility and the need of securing a united policy in the cabinet, still finds room for the inclusion of colleagues belonging to distinct communities of sufficient political importance. It would not only be possible, but it would in practice be extremely advisable, if a Hindu prime minister of the future federal government were to include in his cabinet Muslim and other members of important minority communities provided they held the same views politically as himself and belonged to the party with which he was associated. The task difficult as it may be, has been performed by various prime ministers of self-governing countries. The Dominion of Canada has been faced with the same problem not merely in the constitution of its cabinet, but also in the appointment to the leaders of the political party at Ottawa and at the Provincial Capital. Says a distinguished writer on the

government and politics of Canada, 'the new Premier must also regard :—

- (i) the claims of French Canada
- (ii) the claims of the other eight provinces
- (iii) the claims of the English speaking population of Quebec and
- (iv) the claims of the Roman Catholic population of the Dominion that is not French.

Three cabinet or Ministerial offices are usually assigned to French Canada. The same number as a rule go to Ontario. At least one Cabinet office must, by usage, be assigned to each of the provinces of Nova Scotia, New Brunswick, Saskatchewan, Alberta, and British Columbia and since 1869, no Cabinet has been long without a representative of the English-speaking Roman Catholic Church'. In fact 'the distribution of Cabinet offices based on geographical considerations and on claims of race and religion and specially financial and material interests, is an innovation on the usage and traditions of the Cabinet at Westminster. The innovation has been developed by the differing conditions of Canada and the United Kingdom; by the operation of the federal principle and by the need for conciliating assertive interests, racial and religious.

A Canadian paper in an article on the subject says :

'Sir Wilfrid Laurier is not the only sinner. Practically every party leader in Canada managed Quebec, as Sir Wilfrid has managed that province. A little more than an equal division of the spoils of office, concession here and concession there to race and creed and there you have the statesmanship of Canadian Premier of both conservative and liberal stripe'.

While I am on this subject I may as well refer to the extent to which the principle of racial representation has been carried out in Canada. It is a rule that the offices of Speaker and Deputy Speaker can at no time be held by men of the same race. If the Speaker is a French Canadian, the Deputy Speaker, who is also Chairman of Committee, must be an English-speaking Canadian; for the rule of the house is that 'the member elected to serve as Deputy Speaker shall be required to have the full and practical knowledge of the language that is not of the Speaker for the time being'.

Porrit in his book on Canada says 'The clerkship and the assistant clerkship of the house and the offices of Sergeant at Arms and Deputy Sergeant at Arms all appointive as distinguishing from elective offices—are by usage, also similarly divided between the two races. Nearly all the offices, important and unimportant, connected with Parliament, with the Senate as well as with the House, are distributed in accordance with these rules or usages. A roll call of the staffs of the two Houses including even the boys in knickerbockers who act as pages, would contain the names of almost as many French Canadians as Canadians of British ancestry.' It may be suggested that considerations of population, of tax-paying capacity have to be borne in mind in making such appointments. 'Quebec today elects only 65 out of the 234 members of the House of Commons. Its population is not one-fourth of the population of the Dominion. Its contribution to Dominion revenues does not exceed one-sixth. But an equal division of offices of the Houses of Commons is regarded by Quebec as necessary to the preservation of its rights and privileges and so long as each political party, when it is in power, is dependent on support from French Canada, it will be nearly as difficult to ignore the claim of Quebec to these Parliamentary honours and offices as it would be to repeal the clause in the British North America Act, that safeguards the separate school system.'

There is nothing vicious therefore in having regard to considerations of community in the formation of a cabinet, but the over-riding principle must always and inevitably be that of joint responsibility, of one-ness of objects and of loyalty to the chief. In the federal executive apart from the claims of politically important communities, there is no doubt that pressure will be brought to bear on the prime minister to choose some members at least from what may be termed for this purpose the 'state block'. Such is the cabinet that I visualise in the future federal constitution.

ONE OR TWO GOVERNMENTS ?

And now let me turn to an aspect of administration and legislation which I referred to earlier. It has been found that it was necessary to constitute a certain group of subjects as

central subjects which were to be subject to central legislation, that is, legislation by the British Indian section of the house. The question naturally arises as to how the administration of these subjects is to be carried on. Should there be a central government, apart from a federal government, as there has virtually been a central legislature apart from the federal legislature? Can two governments function even if it be possible for two legislatures to function separately in the manner indicated above? Those who know best the actual work of administration, will at once state that this is an impossibility. Legislation may be separated as affecting British India on the one hand and All-India on the other. But the administration of subjects cannot be so compartmentally divided. The inter-action of policies in administration is such that a division will be futile. One is therefore irresistibly driven to the conclusion that whatever may be done with reference to legislation, the government of the federation must be one, both for central subjects and for federal subjects. This conclusion takes note of the anomaly which has to be squarely faced and accepted—that in the administration of central subjects, a government composed both of State representatives and of British Indian representatives, will have a voice. It is true that there have been objections raised by British Indians against State representatives in the Government having a voice in the administration of purely British Indian subjects, when States have refused in any way to countenance interference by British India in the purely internal administration of States. The anomaly could not be got rid of, though its forces and extent may be minimised by the prime minister so distributing the subjects of administration to his colleagues as to avoid the authorisation of any minister drawn from the State representatives to deal directly with purely British Indian subjects.

VOTE OF CONFIDENCE

A further question of very great interest also arises out of these considerations. If the Government is defeated in the British Indian legislature on a matter relating to a British Indian or central subject, what is the position of the Government? Particularly, what will be its position if it is able

to get a vote of confidence in the whole federal house on a federal subject? The federal Government can claim that it possesses the confidence of the country and if the same government has ceased to possess the confidence of British India; if the Government were to resign on that ground, it would virtually mean that in the most important aspect of government—the turning out of a ministry—state representatives would have had no voice. These are difficulties which have to be faced and hence arises the most difficult of all questions—what should be the method whereby a cabinet could be held to have lost the confidence of the country?

RECENT PARLIAMENTARY PRACTICE

A study of recent parliamentary procedure in various countries brings out the fact that Cabinets are not turned out of office merely because there is an adverse vote passed on them in the legislature. In an earlier period of democratic constitutions, the theory of responsibility of the cabinet to the legislature was carried to such an extent that a defeat of the cabinet on any point in the legislature, was the occasion for arousing a rallying cry on the part of the opposition asking the ministry to resign. When Gladstone and Disraeli were alternately, the prime minister and the leader of the opposition in the Parliament, they acted on the principle that an adverse vote in the legislature inevitably led to their resignation. If a bill were introduced and any amendments were carried which were opposed by the Government, a constitutional crisis was supposed to have arisen; the further progress of the bill was stopped and the resignation of the ministry was in the hands of the Queen. This idea of the responsibility of the cabinet to Parliament has been vastly changed in recent years. It is a matter of common knowledge that in the two Parliaments wherein Mr. Ramsay MacDonald was the Prime Minister on behalf of the Labour Party, he repeatedly said that he will not vacate office except on a direct vote of censure or no-confidence. This tendency of ignoring adverse decisions of the legislature and continuing in office till it was felt that there was a real inclination on the part of the legislature to change the cabinet, has been growing during the last three decades, and has now firmly become

rooted in the English constitution. The question that we have therefore to examine is, how far in India the older principle can be applied and how far the new principle may be more practicable in carrying out the administration. After a great deal of consideration, it has been finally decided that the cabinet must vacate office on a direct vote of no-confidence passed by the legislature. This does not however mean that on other occasions the cabinet should not resign. It only means that the one occasion they must resign without any excuse, is on the occasion when a no-confidence motion has been passed by the legislature. Where a prime minister finds that though a no-confidence motion has not been passed against him and his colleagues, he is not in a position to get through legislative measures, or command a sufficient majority for ensuring the passage of those finance bills and other matters that are absolutely essential for his administration, it would be the height of folly on his part and he would find himself in the most undignified position, if he were to stick to office—an impotent and irresponsible and battered down prime minister. But the position is not left entirely to his choice. After all, there is the head of the State—the King, the President, or the Governor-General in India—who will take note of these expressions of want of sufficient confidence in a legislature and who has the power to call upon the minister to resign if he finds him utterly incapable of carrying through essential legislation in Parliament. It is true that the prime minister has got a right to advise the dissolution of parliament and normally in these matters the advice of the prime minister is binding on the head of the State. But occasionally—and the memoirs and letters of Queen Victoria have shown it conclusively—the head has got the right of either changing the minister or of dissolving the legislature, in spite of the contrary advice of the prime minister.

NO-CONFIDENCE

The next question that arises is how the direct vote of no-confidence should be passed by the legislature. In many countries it is the expression of the opinion of the popular chamber that is taken into consideration in this matter. An

adverse vote in the House of Commons means the resignation of the ministry, or the dissolution of the House. In India, an exception has been made. Many there will be who will criticise this exception and feel that one of the most valuable principles of the constitution has been unnecessarily violated thereby. But some at least of those who are responsible for suggesting and endorsing this exception stated that in an All-India federation of the kind just described, a reasonable stability of the ministry was important, and that the representation of State delegates, and the proportions in which they entered the two Houses, had an obvious and important bearing on the vote of no-confidence. After all, it has to be remembered that the constitution which is being framed on these democratic lines is for the biggest population ever known in history and that the affairs of a vast country are complex enough and vital in all conscience. Party alignments have not been sufficiently developed, though in course of time, one hopes that the normal working of democratic influence will bring that about. It is more than possible that in the first few years at least, group system will grow such as those one is accustomed to in France and Germany. And in that state of flux, repeated ministerial crises as those which have overtaken France and Germany cannot be faced in India. The fact that there is an elected President in both these countries, goes a long way in mitigating the serious inconveniences that are caused by the too frequent overthrow of ministries. A Foreign Minister from France, in the midst of his serious arguments at the tribunal of the League of Nations, is presented with a telegram stating that his Ministry has been thrown out of office, and he no longer enjoys the confidence of the legislature. He closes his speech and returns to Paris by the night train. What an obviously hopeless position for a person to face, for any ministry to face, particularly in international situations! Such were the considerations that led to an emphasis being laid on a reasonable amount of stability being guaranteed to the federal ministry in India. On the one hand, the danger of establishing an oligarchy or a clique which was incapable of removal, whatsoever be the forces arrayed against it and however strong public feeling may run counter to its existence—had to be

avoided. On the other, the manipulation of cliques, the formation of cabals, the joining together of ambitious individuals, more anxious to get into the seats of power than to integrate the just rights of their country and countrymen, may bring about the fall of ministries and so ruin the constitution and its progress. It was considered by many that a vote of no-confidence adopted at a joint session of the two Houses of the federal legislature by a majority of the strength of the two Houses, must result in the resignation of the ministry. This proposal has not been finally accepted, though one hopes that the advocates of a stable ministry would not, in their zeal, exceed this utmost limit. To those who feel that the principles of democracy have been negatived by such a proposal, one would like to say that '*Festina Lente*' is not an altogether inapplicable principle in politics.

RESIDUARY POWERS

There is a very important aspect of the division of functions between various legislatures which may now be adverted to. We have seen how subjects have been roughly classified into three groups, federal, central and provincial. The question has arisen as to what should be done with any matter that may arise outside this classification; and this raises the whole question of residuary powers of legislation. Where it has not been possible to allocate all the subjects between a federal legislature and the legislatures of federating units, because human ingenuity is not so far-reaching as to exhaust all possibilities that may arise at all times however remote, the expediency has been resorted to, of vesting either in the one legislature or in the other a specific power called 'the residuary power' which will enable that legislature to deal with the subject when such a contingency arose. The great fight that has been carried on at the time of the formation of various federations, whether the residuary power should be vested in the federal centre or in the units, is known to students of constitutional history. At the time of the very first federation—the American federation—owing to the circumstances under which the units were federating, giving up, as we saw, only specific powers to the federal centre, the question easily resolved itself, and residuary powers were vested

in the federating units—the sovereign units. The same happened when the Canadian federation was formed, but when the Australian federation was formed, a different course was adopted. By that time, the disadvantages of vesting residuary powers in federating units came to be more vividly realised. In the 18th century, functions of administration were few indeed, and even Madison and others did not realise the possibilities of subjects that may come on the horizon and which could not be dealt with by individual units. Scientific development, the discovery of steam as a force and even more of electricity, brought into existence problems which were never visualised by the American federalists; and for a time, the federal centre in the U. S. was in a state of paralysis. Telegraphs, wireless and many other subjects which have since come into existence, could not be legislated upon by every federating unit. And so, the opinion grew that residuary powers must really vest in the federal centre. In India unfortunately, the course of discussion took a different turn. What one would naturally have expected, as a subject which ought to be dealt purely on its merits and without any bias from communal or other considerations, occupied a very prominent place in the titles of communal politics. One group of British Indians asserted with vehemence that unless residuary powers were vested in the provinces, provincial autonomy will become a farce and the centre will ultimately extinguish all initiative in the provinces. Another set of British Indians equally unreasonably, if one may say so, laid the greatest emphasis on residuary powers being vested in the federal centre. Confusion became so confounded that men began to talk of residuary powers as if they were over-riding powers—powers which a centre can use at its will to direct provincial agencies to do what it liked. Nothing can really be further from the truth: residuary powers are more in the nature of emergency powers and powers which cannot be foreseen at the time, as necessary for use; and understood in that way, no question of over-riding the provincial legislature or government can possibly arise. Moreover the scientific study of administration has grown, and the division of subjects into federal and provincial, however difficult it might have been at one time, can be

done with a great deal more of accuracy at the present day, and exhaustiveness of the division can be assured to a certain extent. In such circumstances, if the utmost pains were taken in framing the schedule of federal, central and provincial subjects, the problem of residuary powers becomes much less important than it loomed at first sight. Even so, a section of British Indian opinion was not agreeable to residuary powers being vested in the centre. Ultimately, a compromise was suggested, which it is hoped will be accepted, that when any occasion arises, whether residuary powers should be used either by the centre or can more properly be used by the provinces and States, the Viceroy should decide which must be the proper forum for the proper use of such residuary powers, and thereafter that particular forum, the legislature and the connected administration will utilise those powers. This is very different from a suggestion which was made at least in one quarter that the Viceroy should use the residuary powers—a patently absurd suggestion—one which is unworkable in practice and utterly wrong in theory. The solution thus arrived at is not an ideal one, but one ventures to put it forward as a practical one in the vehemently divided state of opinion in which the country finds itself over this question.

IV

ADMINISTRATIVE FUNCTIONS.

The task of framing the constitution for a federation does not end with the division of legislative powers between the federal legislature and the legislatures of the federating units. The daily work of Government has to be carried on and the federal subjects administered in accordance with federal laws by an agency whose functions have to be clearly defined. The administration of a Federation is entrusted to the Executive. The word Executive is used in two different senses by constitutional writers—the political executive which forms the ministry and the administrative executive which is composed of what are termed the Civil Services. The Political Executive is in charge of laying down policy in accordance with the wishes of the legislatures; but ultimately it is the Civil

Service that carries out the policy both of the legislature and of the Cabinet. The administrative affairs of a country are wisely entrusted to a permanent body of Civil Servants who are assumed to have no political bias and act without any special predilection either to particular political principles or to individuals. That, at any rate, is the theory of the Civil Service whatever the fact and practice may be in different countries.

2. Different Federations have devised varying methods by which the execution of this work can be carried out. The simplest method is that adopted by the United States of America where the Federation has its own organization of federal services throughout the area of the Federation operating directly on the citizens, carrying out laws passed by the Congress under the orders of the Federal Executive. At the other extreme is the system which some Federations have adopted, according to which the Federal Government owns no services at all or has got a bare skeleton service for its purposes. The Germanic Federation of 1871 is an example of this latter type. Its laws were executed, its affairs were managed not by its own officers but by officers of the State Governments. It has been both expedient and advisable in several Federations to employ officers of the different federating units to discharge the duties of the Federation. Such officers take upon themselves the double task of being the executive of the Federation and of their own respective State Governments. The justification for this arrangement is twofold. In a sense it makes for efficiency and ensures cheapness in the cost of administration. To have a set of officers administering directly on behalf of Federal Government and another set on behalf of Provincial Governments will result in the creation of such a large number of posts that the country will feel smothered under the weight of the bureaucracy so created.

3. The question of how to arrange for this double administration is one of primary importance in a country like India. So far as British Indian Provinces are concerned, in the early days the Provincial Governments were merely the agents of the Central Government and the necessity did not therefore arise of having a separate set of officials working

on behalf of the Central Government in the Provinces. In some Departments no doubt such central services were maintained as from the nature of the functions, the work could not be entrusted to any one of the provincial services. The Railway Services and those of the Posts and Telegraphs Department are instances in point. But otherwise the administration of Central subjects was carried on by provincial agencies, officers of the Provincial Governments being under a liability on behalf of the Central Government to do such additional duties as the Central Government may impose on them. The work of the Customs Department, of the Income-tax and Salt Departments of the Central Government are instances in point. With the introduction of the Montagu-Chelmsford Reforms the tendency, which was already appearing, was emphasised for a complete separation of the agencies which carried out the work of the Central Government and of the Provincial Governments. Very early after the introduction of the reforms a separate income-tax service was formed solely and entirely under the control of the Central Government. Similarly the officers of the Salt department were separated from those of the Provincial Excise department and placed under the control of the Central Government. At the present moment in spite of the fact that Provincial Governments continue to be agents of the Central Government in respect of the non-transferred departments, practically all the services required by the Central Government form a separate organization under the control of that Government. The emphasis will increase in course of time when the Federation is formed for the separation of the agencies of these two governments and the conferment of autonomy to the provinces will almost inevitably lead to the same result. The question then arises whether it is really in the best interests of the country that such an exclusive organization should be set up with the result of a costly bureaucratic machinery and a burdensome and a too frequent operation of several sets of officers on the citizen. It has therefore been suggested that the Federal Government should have some power whereby it can ask Provincial Governments to direct their officers to carry out some of the duties of the Federal Government. The Provincial Governments would

then be under an obligation to employ their officials for the discharge of such functions as the Federal Government may require them to carry out on its behalf. But this conferment of powers on the Federal Government must have some limitations; otherwise a Provincial Government may find the best portion of its service employed in the task of discharging federal functions to the disadvantage and certainly the inconvenience of the autonomous Provincial Governments. A Federal Chancellor of Exchequer anxious to conserve the purse may devolve on provincial officers the whole burden of administration with the result that the Provincial Governments may have to appoint additional staff to carry out their own legitimate duties. Such a position would be unfair to the Provincial Government. The provision had therefore necessarily to be added that where additional staff was required to be maintained owing to the extent of the use by the Federal Government of the officers of the Provincial Government, the cost of such additional staff should be met by a grant or contribution by the Federal Government.

4. Having discussed the position with reference to the provinces it has next to be considered with reference to Indian States. At present there are a few departments of the Central Government which are administered in State areas directly by its own officers such as the Posts and Telegraphs and the Railway Departments. Such an arrangement will continue in the future Federation, and officials directly under the control of the Federal Government will operate in State areas for the purpose of functions relating to such departments. But the States refuse to have any extension of this arrangement in their areas. They do not want any officers directly appointed by the Federal Government to operate on the citizens of Indian States. The example of the Germanic Federation had a strong effect on the State delegation and they suggested that following that example the Federation should depend upon the officers of the State discharging such functions as may be necessary for the administration of Federal Subjects. The State Governments would in that case make themselves responsible for the carrying out of the wishes of the Federal Executive within their areas and in reference to the subjects which were under the control of

the Executive. And this arrangement was accepted as the most practical one for the time being.

5. There is, however, a further consideration that arises where in provinces you have officers of the Provincial Government carrying out the duties of the Federal Government or in States you have the Governments guaranteeing the performance of the work of the Federation through their officers. It is perfectly true that a State Government will have the administration of the Salt Act for instance or the excise duty on tobacco carried out by its own officers in its area. But the Federal Government has an interest in one aspect at least of such administration whatever the agency may be. It must be assured that certain canons of propriety are observed in the administration of these subjects, that certain tests laid down are properly fulfilled and that the rules and regulations formulated for the purpose are followed in the same manner throughout the area of the Federation. If there is a set of officials who are not appointed by the Federation, over whom the Federal Executive has no check, to whom it can issue no direct orders, an impasse may easily arise in the administration of any department. It follows therefore that the Federal Government should have in such cases the power to supervise the execution of its authority by these services. If the Federal Government must supervise the work of these officers either in States or in Provinces it must have power to send down from time to time or even continuously a certain number of Inspectors, Supervisors or Commissaries who will test the nature of the work carried on by these officials on behalf of the Federation and send reports to the Federal Executive. The appointment of such Commissaries or Supervisors necessarily raises the issue as to the extent of the power which they should possess. In a Provincial Government the actual work of administration of a Federal subject may be carried on by a subordinate official but he will be subject to control by a set of superiors each checking the work of the officer just below him. This regular hierarchy of officials is to be found both in provincial administrations and in those of most of the States. What place has then the Commissary in this astral system where the functions of each official are arranged with such delicacy

that there can be no disturbance to any one without disturbing the whole series in it? Can the Commissary acting on behalf of the Federal Government give direct orders to any officer occupying positions at various stages of this official pyramid? Difficulties abound, resulting from the dual control; conflicting orders and consequent confusion can be easily imagined if such interference were permitted. Even granting such a system of direct authority over the provincial executive officers may be agreed to in the provinces, State delegates again raised serious objections to such intervention. Following the Prussian example again they suggested that there should be no direct connection between the Federal Supervising Officers and the State agency or officers who carry out the administration. They wanted the least amount of disturbance in their system of Government.

6. Under such restrictions and limitations it is possible to visualise the position of a Supervisor appointed by the Federal Government. If the power to check, to advise, to find fault with and levy penalties are not given to a Commissary or Supervisor then at best he can only be a sort of informant on behalf of the Federal Government. He can send up his notes of inspection as to how things are going on in the various units from time to time and the rest will then remain with the Federal Government. What then should the Federal Government do? In the first place the State Government will be gently told by the Federal Executive that things are not being done in a proper manner in its area. The Laputan Flapper sitting by the side of his master occasionally flaps him with a little fan just to tell him that his gracious attention is invited to the matter on hand, and the Federal Government will play the part of a Laputan Flapper and gently remind the State concerned that the work of its officials on behalf of the Federal Government requires the earnest attention of the State. It is not an ideal arrangement but it is an arrangement with a precedent, however unsatisfactory and what is more an arrangement which the State delegates insisted upon.

7. The question has then to be faced how ultimately the wish of the Federal Government can be made to prevail. Constitutions have to be framed with an eye to all eventualities.

Stress may not be laid on one portion of it; one may glide over some provisions but the powers are still to be there capable of being used under certain circumstances. The State delegates again turned their attention to the Prussian model and asked themselves what was done when the Germanic Federation was formed. The question of the Executive of the Federal authority, as it has been termed by constitutional writers, though serious in implications has yet to be faced squarely. So far as Provinces are concerned a Federal Government would directly convey to the Provincial Governments their sense of dissatisfaction at what was going on and place before them the Federal requirements. But the State Governments were not situated in the same manner. They had in them a personnel peculiarly sensitive to orders from above. I am not referring at present to orders which the Foreign and Political Department may give to any State. State delegates therefore said that in case the Federal Government felt that any particular subject was not being properly administered a hint should be conveyed to the State authorities through the Viceroy who would be obviously acting on the advice of his responsible ministers. The Viceroy therefore would be the authority who will convey this suggestion. But granting all this is done and yet there is no improvement in the situation, what then? The Constitution will probably provide that the Viceroy in that case will execute the order on behalf of the Federal Government. What does that mean? Let us look again at the Germanic Federation. That Federation and the *Bundesrat* could decide disputes which may arise in such matters between the federating units and the Federal Government and if its decision went against the federating units, the Kaiser will execute the decision of the *Bundesrat*. What was the meaning of this provision? Even those who frame constitutions do not want to put in cold ink the ideas that they really wish to convey. The Kaiser according to the constitution was the Commander-in-Chief of the military forces of the Germanic Empire. The Kaiser's execution meant in the last resort a mobilization of all those forces against any particular State which did not carry out the wishes of the Federal Government. It is unmistakably clear however much language may conceal the idea so as not to

wound the susceptibilities of those Princes who were in charge of the federating States of the German Empire. They have interpreted that the execution by the Kaiser meant in the ultimate resort the using of the forces which were under the control of the Kaiser.

7. The Viceroy is exactly in the same position in India. Defence for the time being though a Federal subject is intended to be in charge of the Viceroy, the Crown being directly responsible for the administration of the subject. The Viceroy is the Commander-in-Chief of all the armed forces in India and the entrustment to the Viceroy of the execution of these orders means that, in the ultimate resort, the Viceroy will have the power of the armed forces behind him to see that either an erring State or a recalcitrant province is brought to book if it does not carry out the Federal Government's orders. These are the various methods by which it has been suggested that the administrative functions should be divided between the Federation and the federating units and the work of the Federal Government carried on.

FEDERAL FINANCE

I would like now to turn to another problem of Federation, a problem which has given cause for a great deal of anxiety to every one who has tried to solve it satisfactorily. The establishment of a Federation implies the setting up of a costly institution, an Upper Chamber and a Lower Chamber, the Federal Executive, a Federal Civil Service of no mean dimensions and all the huge paraphernalia necessary in any form of democratic Government. And here I should like to point out that no democracy has proved to be a cheap institution. If one wants cheapness, light taxes and as little interference as possible by the State, it must be found in other forms of Government rather than in Democracy. But though Democracy is to be heavily paid for, its advantages are in the opinion of the best minds so great that they outweigh the obvious disadvantage of cost. To carry on the Government in consonance with public opinion is ultimately far the cheapest method, taking political and economic factors together into consideration.

One of the fundamental issues which have to be faced when a Federation is started is how its functions are to be carried on; what are its resources and what are its requirements. Is there just that little difference between the cost of administration and its resources, between the income and expenditure of the Federation, that which Mr. Micawber so lamentably missed all his life—the little sixpence—that may make all the difference between a solvent and an insolvent State. The problem of finance is a vital problem connected with the management of any State, and to-day when the world is in the jaws of an economic crisis of the most unparalleled character, none can gainsay the fact that finance is the very life-breath of Nations and of Governments. What then are the financial proposals with reference to an Indian Federation? The problem of allocating sources of revenue to the Federation and the Federating Units has always been surrounded with great difficulties both from the conflicting nature of the interests involved and from the limitation of the resources to be availed of. The United States of America in those early days when the Federation was formed was not faced with the same amount of difficulty as now presents itself in a modern Federation. As Seligman points out the Federal Government was not seriously embarrassed in the choice of revenue by any consideration affecting State finance. The fathers of the constitution decided that the Federal Government should have unlimited powers of taxation both direct and indirect but that the direct taxes levied by the Federation should be apportioned to the States according to their population. There is no specific allocation of resources between the Federal Government and the States except that import and excise duties are reserved to the former. In theory the States could also levy excises but owing to a special provision in the American constitution that uniformity should be observed in the levy of these duties among all the States, no State has been able to avail itself of this power. The Federal Government could also levy direct taxes but as already stated the benefit of these taxes should be distributed among all the Units. The Federation was thus only an agency for collection; it had not the power of utilizing the revenues so obtained. The American

Federation relies mainly on its customs and excise duties, an item of revenue which has steadily grown since the Civil War and which in the last years of the 19th century formed the main resource of the Federation. From 1896 to 1910, forty per cent of the ordinary expenditure of the Federal Government was covered by the receipts from the excise revenue. Income-tax and inheritance taxes were levied during the Civil War and were then regarded as indirect taxes. In 1872 they were repealed when similar war taxes were removed. But in 1894 when the same income-tax was relevied after a commercial crisis, the Judges of the Supreme Court held that it was a direct tax and that therefore it was unconstitutional to impose the tax for the purpose of the Federation. In 1909 the Federal Corporation Tax—that is a tax on corporate income—was imposed as a special excise tax for the benefit of the Federation. On an appeal to the Supreme Court, the Supreme Court realising the difficulties of the Federal Government held that it was not a direct tax but it was really a tax on the privilege of conducting business in a corporate form—thus showing that after all, notwithstanding everything that may be claimed for the unbiased nature of judicial administration, judges are human beings living in and among the community affected by the laws and in the interpretation of those laws they wisely take note of existing conditions. This constant fight over direct and indirect taxation in America was finally settled by an amendment of the constitution in 1913. The 16th amendment repeals the apportionment clause of the constitution and thereby empowers the Federal Government to use the resources of any tax direct or indirect for its own purpose. But the States have all the powers with the Federation. There is a Federal inheritance tax and a State inheritance tax, a Federal income-tax and a State income-tax and 13 States are competing with the Federal Government in the domain of taxation. This double levy of taxation on incomes, legacies and corporation is bound to cause vexation and hardship to the tax-payers.

In the old Germanic Federation on the other hand there were only a few taxes allotted to the Federation. The Empire had the sole right of legislation in all affairs relating to custom and in the taxation of salt, tobacco, beer, spirit and

sugar. The Federation was also empowered to levy direct taxes, though it did not avail itself of this power till a very late stage of its development. The amount however was distributed in certain proportions between the Federation and the States. A special feature of the financial system of the Germanic Federation was the statutory obligation cast on the States to make contributions under certain circumstances.

We may now briefly examine the system of taxation in two British Dominions, Canada and Australia. The British North America Act of 1867 gave the Dominion of Canada, the Federal Government, very wide fiscal powers. Under Section 91 the Parliament of Canada was authorised to legislate upon 'the raising of money by any mode or system of taxation'. In actual practice however, customs and excise duties were the main sources of revenue of the Dominion Government. Since the Great War the needs of the Federation have so grown that many kinds of war taxes have been imposed. They include, taxes on banks, insurance companies, and other corporations, a business profits tax, income-tax and stamp duties. Levied as emergency taxes during the War, they now form permanent features of the fiscal system.

The Constitution Act gave power to the provinces to levy direct taxes but till very recently no Provincial Government was able to utilise the power owing to the unpopularity of such taxes. The chief characteristic of provincial finance in Canada is the system of subsidies or grants from the centre. Under Section 118 a grant fixed by statute is payable to Ontario, Quebec, Nova Scotia and New Brunswick. Besides these amounts an annual grant in aid of each province shall be made at a certain amount per head of the population. These provisions have been since amended but the principle and the contributions continue. It is needless to comment on the disadvantages arising out of such a system. Let one of the Finance ministers of the Dominion, the Honourable George Foster, give his impressions: "The provinces have mostly fixed revenues, pretty well-defined, and not very elastic. For increase beyond these, they can resort to forms of direct taxation, a proceeding which is unpopular and might be dangerous to party managers. The tendency, therefore is to constantly press upon the Federal Government for adjustment

and additional allowances. To spend money extravagantly in the provinces and for largely party reasons with the distant hope that eventually the Dominion Government can be persuaded and forced to come to the rescue, is not an unknown contingency and constitutes an element of menace to the stability of the confederation itself."

In Australia, the Commonwealth possesses full powers of taxation, both direct and indirect. The only limitation of Parliament is that it cannot discriminate between States or parts of States. The Federation has exclusive jurisdiction so far as customs and excise duties are concerned. The Federating States possess concurrent powers of taxation except as regards customs and excise duties.

Under Section 87 of the Act, for the first ten years the major portion of the customs duties were credited to the States and until uniform rates of customs duties were imposed the net proceeds had to be handed over to the States. The share of each State in the customs receipts was calculated according to the goods consumed in that State.

Since 1910 the Commonwealth has been imposing direct taxes and these taxes have grown in numbers since the War. A land tax, an income-tax, a war profit tax and an entertainment tax have all been imposed. The States derived their main revenue from commercial undertakings like the Railways and Tramways. But latterly they have also imposed direct taxes such as income-tax, probate duties, company tax and amusements tax. This process of double taxation resulting from concurrent jurisdiction has caused great dissatisfaction and annoyance to the citizens. A series of conferences has been held to remedy this state of affairs and attempts have been made to have only one agency for collection of income-tax. It is realised that the great need of the Federation is an agency for financial co-ordination and the Australian Loans Council established to act as the central borrowing authority is a step in the right direction.

There are thus various systems of federal finance each intended to give enough to the federation, and yet provide enough also for the federating units. Two requirements are essential when you discuss this question—the solvency of the federation must be assured, and if possible the solvency of

the States also must be ensured. A federation cannot run away with its powers of taxation and leave the States to manage their affairs as best they can. Nor can States aggrandize to themselves all powers of taxation, leaving the federation wholly in the air. There are some (and even academicians are divided on the subject) who will put all the emphasis on the solvency of a federating unit. There are others who would emphasise, and in my opinion, quite rightly, the solvency of the federal centre, because the federal centre represents the dignity, the authority and majesty of the whole nation and the country to the outside world. The federating units are after all smaller areas and small governments. But then, say the advocates who stress too much the solvency of the federating units, in the schedule of subjects which are under the administration of the federation, it is obvious that there are not many subjects of national concern : what have been termed the 'nation-building' subjects (that delectable phrase which has been of great advantage to many people at times of crisis when they could not put forward a better argument to substantiate their case) the nation-building subjects are being given over to provincial administrations. The spread of education, the spread of agencies which will combat disease, dirt and unhealthy conditions, and all else which goes to form the backbone of the nation—these matters have after all been given to the provinces. And the advocates of provincial sound finance therefore say that here lies the life-blood of the nation, and it is here that you must take care to see that the government is properly maintained. Not only that; the prejudices which have grown up owing to years of irresponsible government at the centre of India, have had not a little to do in emphasising this attitude of the advocates of provincial finance. The Military is a burden which the centre is carrying on from year to year, and is unparalleled in the extent to which the resources of the country have been called upon to meet this burden; they do not care what happens to the Central Government, because at the best or at the worst, it will merely mean a reduction of the military expenditure, and that is exactly what every one has been asking for. A forced depletion of the resources of a federation, an apparently insolvent federation,

is in their opinion not merely a perfectly legitimate thing, but perhaps the best thing that might happen, if the military budget is to be cut down. And, they argue, the military budget could never have been cut down from 52 crores which it was requiring just a few years back, to 47 crores, the present amount, but for the economic blizzard, but for the pressure on the Government of India through lack of adequate resources, to cut down that expenditure. If to-day the military expenditure could be cut down by 5 or 6 crores, they argue, it could have been done all along: there was no justification for this expenditure, and nothing but the necessity of circumstances which the Government of India cannot control, will make for this reduction in the military expenditure.

I do not agree with these advocates. I do feel that the solvency of the federation should be assured, and should not be left to hazy conditions; by all means, let us insist on the cutting down of our military expenditure; but let us also realise that a Federal Government must have resources of its own, and must be able to balance its budget.

Let me now turn to Indian conditions. At the very outset there are limitations to any proposals with reference to the schedule of taxation between the federation and the provincial units, limitations which were imposed by the fact that the State delegates had to concur in including certain taxes in either the one schedule or the other. I want those who criticise the proposals to remember this essential condition.

What is the position with reference to federal finance? The State delegates said that they were agreeable to include in the schedule of federal taxes only indirect taxes and not any of the direct taxes; they will not have the operation in their areas of any direct tax. In particular they refused to allow the income-tax to be levied in their areas. It has been found from the experience of federations that some sort of expansive direct tax is absolutely essential to a federation. But as against that proved theory, ascertained by facts and experience, we came against this dead wall, that the State delegates refused to have any direct tax imposed in their areas. In the first and second attempts at the R.T.C., they would not budge an inch. Gradually they were able to be

persuaded. It was suggested that income-tax may be divided into two categories—there was the personal income-tax, tax against the person who had a certain amount of income—and there was what was termed the “corporation tax”—tax on the profits derived by business concerns. And we suggested that even though you may leave out the personal income as necessitating a scrutiny of the income and expenditure of an individual and therefore an exhaustive analysis of the position which that individual occupied in society, the “corporation tax” in the States may be levied by the Federal Government. In the collection of personal income-tax, you must know the life of the people among whom you collect; you must have sources of information and you must be able to watch the men’s activities. State authorities said that if that was to be done by federal officers, it involved an amount of scrutiny of the life of the citizen that it was not in keeping with the ideals they had. Whatever other reasons may be, this fact was clear, that they would not agree to the levying of an income-tax in their areas by the Federal Government. But the same objection may not hold good with reference to the corporation tax or companies tax. There was another reason why we should insist that at least the companies tax should become a federal tax, in operation both in States and British India. What would happen if a companies tax were to be levied in British India and not in the States? Why, the veriest dullard among merchants will tell you that the result will be the company will be removed from British India to State areas. Men naturally like to escape the burden of taxes. So that, if the Corporation tax were purely to be a British Indian tax, ultimately there will come about a day when the entire factories and other trading concerns in British India will disappear from this area and will go to State areas and be established there. This practice has been going on even during the last few years. Those who have watched the removal of companies and of factories from Bombay and neighbouring areas to Baroda and other States in Kathiawar, have noticed this process and have congratulated the merchants concerned on their acuteness in realising the position earlier than the Income-tax Department of the Government of India. Therefore, not merely because of this reason, but on

various other grounds the corporation tax must as a permanent measure form one of the federal taxes; and it has been, ultimately accepted as a permanent tax.

The other taxes that they agreed to, were the indirect taxes—customs, excise and salt. There are two new duties proposed to be levied to which the States have agreed: an excise duty on tobacco and an excise duty on matches. You know the difference between a customs duty and an excise duty. An excise duty is a duty either on raw or manufactured products of the country itself, as against a customs duty or a duty which is levied on products imported into the country. These two additional sources of taxation the States have agreed to in addition to those sources of revenue which are now being collected as “indirect taxes” by the British Indian Government and in which the States have all along claimed their right share.

This classification leads us to one consideration. After all, the Federal Government, must be a solvent Government. You know the sources of income and you know the items of expenditure. The expenditure of the Government of India, whether the States join or do not join, is fairly ascertained on the present basis. It may vary slightly from year to year, but you can take it that what it is now incurring is more or less what it will have to incur a couple of years hence. The resources of the Government of India at the present moment include the revenue from income-tax. Income-tax gives us a net income of $17\frac{1}{2}$ crores. If the corporation tax is made a federal tax, that would go to the federal purse; it amounts to $5\frac{1}{4}$ crores. If that is all that is to be given to the federal centre, then you have a balance of 12 crores from income-tax which is now a source of revenue to the Central Government and which, because income-tax is not a Federal subject, must necessarily go to the provinces. A difficulty which had to be faced, an anomaly which must be got over arises on these facts. The ideal system and the only just system is that in a federation all federating units bear the burden equally. If therefore income-tax could not be made a federal source of revenue, because States cannot bear that burden, you cannot provide that income-tax collected from British India alone should go to the coffers of the Federal Government. Provincial

representatives very strongly objected to any portion of the "personal income-tax" of $12\frac{1}{2}$ crores being given to the federal fisc. What can be done with it? They urged that it ought to return to the provinces. That was the only way by which justice could be done between the units and the Federal Government; and as a permanent measure, in spite of the recommendations of the Percy Committee which said that no definite period of years can be fixed—it has been agreed, generally speaking, that after a period of x years, which I shall refer to presently, this income-tax should become a purely provincial source of revenue. But income-tax is a thing whose incidence must be uniform and of the same degree throughout British India. It cannot vary from province to province. It must therefore be regulated by a common source, a common authority, and therefore the proposition was carried that while the proceeds will be distributed to the provinces, legislation with reference to alteration of the rates of income-tax should be a central subject, the legislation being passed by the central legislature. Similarly so far as administration of the subject is concerned, it must be by rules and regulations framed in common and administered by central officers, because in the collection of income-tax, as much depends upon the methods of assessment as upon the law on the subject. In fact, to many individuals, the methods of assessment are more important than the law.

Supposing, with this classification of sources of revenue you are faced with a deficit in the Central Government, who should bear it? The State delegates said, "supposing there is a deficit, a permanent deficit of a certain magnitude, and a temporary deficit at least for a period of years; there are certain liabilities which the Central Government has contracted and which it is not fair that the Federal Government should undertake." That raises the question of the pre-federation debt of India. When a federation is formed, and when federal units come into it, whatever loan is raised, is raised on the guarantee of the revenues of the Federal Government and the burden will have to be borne by the entire Federal Government and by the resources of the Federal Government. But the debt which British India has already contracted, must be discharged by British India; the service of that debt

had to be met and interest charges had to be provided by British India. At present the Government of India has a debt approximately of 1125 crores. Let us not run away with the impression that it is a dead weight debt. I myself believe that no government at present is faced with a better position so far as its debt is concerned than the Government of India. You look at the thousands of millions which have been contracted in Great Britain, in America and in other countries like France and Germany; and compare it with our position, and you will find that we have nothing to be anxious about so far as our debt position is concerned. Most of the debt has been spent on the construction of railways and railways yield handsome profits which cover not merely the interest charges, but give something for the coffers of the public revenue. They have again been spent on irrigation—and whatever may happen to the Mettur Project—the great irrigation schemes are paying. They have again been spent on several of the remunerative enterprises and the profits will cover the interest charges. It has been calculated that out of this 1125 crores, 1006 crores are of this kind. An amount of 119 crores is not covered by any remunerative returns. That is to say the interest on this 119 crores is not met from remunerative enterprises; and therefore I have ventured to repeat that the debt position of the Government of India is stronger than that of any other country. The State delegates asked why they should take over the burden of this debt. The Percy Committee examined this question and it came to the conclusion with the concurrence of two at least of the State delegates, who afterwards repudiated it, that the assets of the Government of India are such that the whole of them is covered; that the revenues or remuneration derived will meet the interest charges; that this 119 crores is no doubt covered in that direct way; but that there are assets of the Government of India which are worth more than this 119 crores; many of it is in the form of Government property—that is to say various buildings, military lands etc. They are assets whose value more than covers this 119 crores and therefore they came to the conclusion that every pie of this pre-Federation debt has been covered and when a new partner comes in, he can take it, because the assets and liabilities

will cancel each other. We thought that the question had been solved, but a new position was created at the 3rd R.T.C. The State delegates had consulted some economic experts in the meanwhile and the result was this. They made a distinction between the value of the assets being equal to the liabilities, and between the debt service being covered for the purpose—that is to say—they said it is perfectly true that the assets are of such value that they more than cover the capital of the debt of 119 crores; but only with reference to this amount there is no return coming to meet the interest charges.

Ultimately however, the State delegates said: 'you start with this 5½ crores which you call "corporation tax".' At present States have no corporation tax, so that essentially it will be a British Indian tax; but this is not enough; increase it as a permanent measure at least to 8½ crores by taking something from the income-tax, because then we will say this pre-federation debt charges will be covered by the 8½ crores. There, without coming to a conclusion, we left the question. What that arbitrary decision will be, whether it will lean on this side or that, I am unable to forecast at present, but I rather suspect that following the usual method, somewhere between the two extremes will lie the golden mean. I have tried to tell you these difficulties so that you may appreciate the reason why pure theoretical considerations have not been vigorously applied and compromises have been made from time to time.

But the position did not end there. I said that on the basis of a purely personal income-tax, 12 crores would go back to the provinces, but the Government of India cannot afford to lose all those 12 crores. It required immediately some amount at least; it could give up probably 5 or 6 crores, but it still requires 5 or 6 crores; and the State delegates again came in with their theory. They said: "We are coming into a federation, but we will not come into partnership with an insolvent partner. You set your house in order; you have a balanced budget, and then we will come and join you; and if after that, there is any sort of deficit, we will hold ourselves responsible along with you to make up the deficit. But you show us that your business is yielding profits or at any rate is not insolvent, and then we will join the concern". The

anxiety on the British Indian side was that whatever may be said about provincial autonomy, and however much they may desire to give financial help to the provinces, so far as the Central Government was concerned, they dare not leave it in a position of flux. They must see that the central budget was balanced and therefore they said that for a period of years, they were prepared to contribute from this personal income-tax; to give the federation a chance to see that additional sources of revenue were developed, and, after that, take back that amount. To-day we want 5 crores. The Federation is started. Let us take it that we should get these five crores as a contribution from provinces, if we choose to call it that. This will be fixed for a certain number of years; at the end of x years the federation will be under an obligation to give up these five or six crores. During the period of this x years, the finance Minister and the whole Federal Government will develop all their sources of revenue; will expand the existing resources and will probably also try to raise the excise duty on tobacco and matches that I have mentioned. And therefore we had to compromise on this. Neither the amount could be agreed upon; nor the period of years— x amount for y years. At the end of y years, the x amount will automatically go; but in the meantime also if Federal resources developed, if the economic crisis has passed over, if customs revenue increases, then to the extent there is a surplus, the contribution of the Provincial Governments will be remitted.

There is also another important consideration. If in spite of the revenue that you can raise and the expanding nature of it, in spite of this x amount for y years, you come across a year where there is a deficit, What will you do? Then, they said, the States and Provinces must agree to a contribution being levied from them to cover this deficit. That contribution can only be levied on them after all the resources of the Government are exhausted, after the salt tax has been increased and after the highest tariff wall has been raised. But so far as the provinces are concerned, that contribution has taken a peculiar form. The income-tax is a provincial source; but the Federal Government has the power to levy a surcharge on whatever rate of income-tax prevails; and it is by a surcharge that the Federal Government will collect

what it requires from the provinces. The income-tax resources being known, the surcharge necessary to be levied is also known, and that amount will be levied. A proportionate amount will have to be collected from the States. The States therefore will be asked on the basis of population to contribute from each of their units a proportionate amount. The proportion of British India to Indian States being 76:24; in a population of 100, if 76 rupees are raised from British India, 24 will be raised from Indian States. How is it to be allocated? Presumably on the population of the various States—that is the proposal of the Percy Committee, a proposal which still holds the field.

But there is another occasion which may arise. An emergency, an economic catastrophe may develop when customs revenue tumbles down, when other sources of revenue fall, so far as the Federal Government is concerned. What is it to do? You cannot levy a surcharge on income-tax; you may not find it possible; incomes may have fallen. Here again a contribution from British India and States has to be made. So far as the Provinces are concerned, they are in a position to show a clear budget, that is to say, an ascertained and ascertainable budget of income and expenditure; and their contribution will be a percentage of their gross revenue. So far as the States are concerned, proportionate allocation will apply. It will be a certain amount based on the strength of the population as compared with British India.

These are some of the ways by which emergency contributions and special contributions can be raised from various federating units by the federal government. I realise that so long as the Government of India or the Federal Government depends on the resource of customs revenue (which is so high—even in the present year, it is very nearly 50 crores out of a total of 85) it is very risky. It has happened in other countries; it will happen in India also. You follow the policy of protection; you try to build up a high tariff wall; you do not want cotton goods to enter the country; you do not want sugar to enter the country; you do not want various other articles which you can produce, to enter the country. All these things will mean that the law of diminishing returns will begin to operate. It is not worth while sending

those goods into your country; the tariff wall may be so high that products may be unable to cross over that wall and enter the country. The customs revenue will tumble down. What is to happen? There has been one proposal made—a countervailing excise duty. To the extent to which these articles cannot come into the country, to that extent your own articles are developed. If Lancashire cotton goods and Japanese artificial silk cannot enter the country, it does not mean that the want of them has become restricted; but it means that Ahmedabad and Bombay are profiteering. There is an obvious remedy. You levy a duty on the manufacture of your own products. We had quite recently a countervailing cotton excise duty. It was unjustifiable at the time. But when you have built up a high tariff wall, protected your industries, made them earn, which they were not capable of doing before, when you have done all that, it seems that it is only fair that when the State is beginning to lose because of the advantage that it has given to the individual, it shall be in a position to recoup its position by alternative means. It may be on cotton; it may be on sugar. And here let me divert to a cognate issue. There is a boom in sugar to-day. In the U.P. sugar factories have been established in various places. In the Mahratta country, the same process is going on. Belgaum is going to have a sugar factory. In South India the craze may come very soon. There is one characteristic of the Indian; if anybody succeeds in an enterprise, everyone will rush in till at last the very weight of numbers has crushed the enterprise and brought about ruin to all. How that is going to be regulated, what provisions may be made by the Provincial Governments or the Federal Government to check that line of advance—how an extreme provincial frame of mind with reference to the starting of industries may bring ruin—I shall leave to economic professors to think over. But I see the danger ahead. I say that this extreme provincialism, that this idea of having a paper mill or a sugar factory in every district, irrespective of the economic scope of these things, is a very real danger which we ought to face.

These are the various ways in which some at least of the problems of federal finance have been dealt with.

V

THE FEDERAL COURT

I shall now turn my attention to the third constituent of a federation—a Federal Court. In every federation, it is necessary to establish a judicial body for one supreme reason. By the very fact that States have come together on an agreed basis and have agreed to surrender a certain portion of their sovereign powers, for the exercise by a central agency, of those powers, it follows that all attempts at settling disputes which may arise in connection with those powers which have been surrendered, must preclude the possibility of civil resistance or of civil war. If two individuals do not agree together in a state of affairs, and in a country where there is no judicial body to adjust the difference and where there are no arbitrators available also, there is only one means by which that dispute can be settled. The two individuals must settle it by trial of strength. Now a federation implies an agreed association of the various federating units, and if disputes arise between the federation and any of those units, or between two units of the federation, the arbitration of forces being ruled out *ex hypothesi*, there must be some body vested with the power of deciding and of adjudicating on these disputes. The necessity therefore of a Supreme Court, as it has been called, or of a Federal Court is absolute in a federation; and there has been no instance of a federation which has not in some form or other a supreme court. It is true that in the North Germanic Federation of 1871, there was not a Supreme Court in that federation; but the *Bundesrat* or the second chamber—the association of the State representatives—functioned practically as a judicial body. At any rate, whether it was very judicial in its decisions or not, it took upon itself the task of doing that which a judicial body would otherwise have done. The criticism against the *Bundesrat* and its decisions are well known to every student of constitutional history. Being composed of the representatives of various States, it necessarily had on its body, the judicial body, the representatives of the erring States also. If there was a dispute between two States, the matter was referred to

the *Bundesrat*, which according to the constitution was composed of representatives of all the States including the representatives of the two States that were at dispute—so that its decisions were to a certain extent vitiated. The decisions of the *Bundesrat* were not judicial decisions but merely decisions dictated by expediency. Above all, the fact that some States were mighty and powerful like Prussia, made it impossible for the *Bundesrat* to give decisions against such mighty States in the same exactness of manner and with the same fairness and impartiality, as it would in the case of a small and comparatively negligible State. Apart from this exception, federations almost invariably have provided for a Federal or Supreme court to adjudicate on disputes between States *inter se* or between the federation and any of the States. In an all-India federation also, the necessity for a supreme or federal court was recognised by everybody. There have been differences of opinion on the issue whether a supreme court which will hear ordinary appeals from the present High Courts, thus replacing the Privy Council, should be established or not. But, there was complete agreement between the State delegates and the British Indian delegates for a Federal Court. Such a court assumes certain cardinal facts. In the first place the Judges of the Federal Court are discharging the most onerous duty that any judge can be called upon to do; they may be adjudicating between the federation and a State for instance; they must therefore be removed from the influence either of the Federal Government or of the State Governments. The separation of the executive from the judiciary, is one of those reforms which has yet to be carried out in this country and it was surprising to find one at least of the British Indian delegates—a gentleman who happened to be a member of a Provincial Government, saying that the High Court itself was not quite free from executive interference. I am not prepared to express an opinion on the subject. Many of us find it risky to do so. But in any case so far as the Federal Court is concerned, it is agreed that it should be absolutely independent of these considerations. The independence of the judges can be secured in several ways. They are to be appointed not by the Federal Government but by the supreme authority, outside the Federal

Government, which is supposed not to have a bias in the matter. The Viceroy, the Crown perhaps, would appoint the supreme judges of the Federal Court. Their salary must not be subject to criticism by the legislature. It ought not to be the subject of rival contending political parties, one trying to increase it, another trying to reduce it on any consideration whatsoever, either of politics or because of the favourite treatment that the Federal Court had given to a Federal Government of a particular persuasion. Therefore we come back to the position which we are so familiar with—that the salary should be non-votable. Their tenure of office should not depend upon the good will of any official connected with the Federal Government or of any Minister, and therefore it must follow the usual practice with reference to all these judges, that they hold office during good behaviour and for a certain age period. The old idea that judges can retire when they like, and they ought to be in office as long as they like, has been given up in many countries—even in England where judges could sit till 90 or 95, they find it rather inconvenient. In this country, particularly, an age of retirement is considered to be not an un-essential thing, and therefore the age has been fixed at 65 for the retirement of the judges of the Federal Court.

The matters that would come up before them would be matters relating to disputes between State and State and between the federation and a State. There is also another matter which must necessarily come before a federal court. The interpretation of federal laws must necessarily come up before the Federal Court. Even as regards the ordinary civil laws administered by High Courts, if any question of law arises with reference to a federal law, the ultimate and final and decisive interpretation must be with the Federal Court. There are two methods which have been suggested in this connection. Either the case which involves a federal law may come on final appeal to the Federal Court from a High Court, in which case the Federal Court will decide not merely on the law involved but also on the merits of the case; or if a decision on the merits of the case is not desired or is not considered necessary, then the High Court can state the case—a procedure well known to lawyers, even at present where some

inferior courts can state a case and send it up to the High Court for adjudication on the mere point of law.

Now this distinction is important from another point of view. The States refused to have their judicial system in any way mixed up with the judicial system in British India. They were not prepared to submit their judges of the Chief Courts to the appellate authority even of the Federal Court; and therefore they stated that while they were prepared to come into the federation and be adjudicated upon by a Federal Court on matters arising between States, or between a federation and states, where a federal law was involved, they were only prepared to have their judges "state" cases for the decision of the Federal Court. It means that if there was an issue between A and B in the Chief Court of Mysore, the matter under discussion would not go up before the Federal Court on appeal; but the Mysore Chief Court will merely extract the legal position, leaving aside all matters connected with the merits of the case, state that legal position to the Federal Court and ask it to adjudicate on that point of law. When an adjudication has been made on the point of law, the Mysore Court will take it as a judicial decision with reference to that legal question, and give its further and final decision on the merits of the case, applying that principle of law to the case. This is the extent to which state authorities were willing to come into the system of federal court and therefore it had necessarily to be left in that incomplete stage.

A matter of greater concern to the British Indian delegates was the establishment of a supreme court apart from the Federal Court. At the present moment, the decisions of the High Courts are subject to the appeal of the Privy Council—not under the King's pleasure, but there was a rigid right of appeal with certain limitations. They stated and they have been stating it for several decades, that it was anomalous that in matters of domestic concern, a tribunal so far removed from the country should sit in judgment. Political ideas of dominion status also gave a certain emphasis to this demand, and it was urged that dominion status involved the establishment of a supreme court, having as far as possible final rights of appeal over the decisions of the High Courts, even as a federation involved the establishment of a Federal Court. The

suggestion was therefore made that the Federal Court which must be established, and which could not at the start at any rate have sufficient work to do, should also form itself into a Supreme Court, and hear appeals regularly from High Courts, subject always—and you know that that is necessary after that decision of Mr. Joseph Chamberlain on the Australian constitution—subject to the King's prerogative to allow a case to the Privy Council in exceptional circumstances. This was the suggestion put forward by many British Indian Delegates but unfortunately there were a few, who did not wish the present connection of the Privy Council to be removed; and in between these two extremes, was the necessarily mediate expression of opinion that while the constitution may provide for a Federal Court to be established immediately and perhaps a Supreme Court which may be established in course of time by the Federal Legislature, there ought not to be any attempt at imposing both these courts on India at the same time by the constitution. Ultimately the result will be that the Federal Court, its powers, its constitution etc. would be embodied in the constitution; and a skeleton scheme for the Supreme Court, its constitution and powers would also be mentioned in the constitution; but while the Federal Court will come automatically into existence with the establishment of the Federation, the establishment of the Supreme Court in actual working order will be brought about by legislation passed in the future federal legislature; and at this stage, we may leave the third constituent element of a federation—a Federal Court.

FUNDAMENTAL RIGHTS

Speaking of the Federal Court, one is necessarily reminded of that subject which has attracted so much attention, the question of fundamental rights which has been the subject of discussion for many years. All the Indian constitutions that have been drafted by various individuals and committees have embodied this provision of fundamental rights. The Nehru Committee was one of those bodies that tackled this question in framing a constitution. Its proposals, I am bound to confess, come very near the proposals that have been ultimately accepted by the R.T.C. at its various sessions.

The Nehru Constitution laid emphasis on this question of fundamental rights and you will find a section where it is said that specific rights shall be granted to every citizen. These rights belong to two or three categories. They are rights relating to property, rights relating to person. The person of the man is inviolable. His house is his castle and cannot be entered into. All citizens are equal before the law; there shall be no distinction between men and women and so on. These rights were considered fundamental and must be incorporated in the constitution and should form part and parcel of the constitution that has to be established. When this question came up before the R.T.C., a very curious and altogether surprising position arose. In the first place, after, as I said, years of debate in this country, they had been incorporated in the Nehru Constitution. They had been touched upon at various sessions of the previous R.T.C. In fact, the Prime Minister in one of his closing perorations—and Mr. Ramsay Macdonald can make peroration as no other orator of the day can—referred to this question of fundamental rights, and said no minority will be allowed to enter the federation or will be subject to a Federal Government unless and until these fundamental rights were guaranteed to it. And so when the Consultative Committee was formed in this country—that small nucleus of those who had taken part in the R.T.C. discussions—they formulated a number of fundamental rights and suggested that they should be incorporated in the constitution. I shall read to you some of these fundamental rights: All citizens are equal before the law; women shall have equal civic rights as men; no citizen shall be deprived of his liberty nor shall he be tried save in accordance with the law of the land; every person shall have the right to practise his own religion and so on. When this question came up before the Conference, Lord Reading first tried to ridicule it, and later, Sir John Simon, the Foreign Secretary, for the first time, took part in the debate, and the circumstances under which he took part in the debate gave specific weight and gravity to his pronouncement on the subject. It was well known that Sir John Simon, with his preoccupations at Geneva, was not able to attend many sessions of the R.T.C. That gave a special weight to his contribution.

Sir John Simon took up this question and examined it from various points of view. He said in the first place, the British constitution does not recognise such a thing as fundamental rights. That is foreign to all conceptions so far as the British constitution is concerned. You may have certain rights growing up in practice; it is perfectly true that the Magna Charta laid down certain propositions, but they are not propositions which are binding to-day. The conception of the British constitution implied the sovereignty of Parliament. Parliament can pass any laws, abrogate any laws and amend any laws. Whatever rights do exist, Parliament can abrogate them. If fundamental rights are to form a feature of the constitution, they are so fundamental that no constitution can alter them. You talk of the right to have a writ of Habeas Corpus. That is the right which comes prominently to one's mind when this question is concerned. It is true that that right is a part and parcel of the law of the land, because Parliament passed it in 1781 or thereabouts, giving this right to the people. But it can be amended and it can be repealed at any time and it can be suspended by Parliament. As a matter of fact, during the War, this Act was suspended, so that the fundamental right, as you call it, does not inhere in anybody as such. In the second place, he said, it was all very well for fundamental rights to be talked of when autocracies were ruling, when sovereigns who did not yield any privileges to the people were on the throne and were dispensing law and justice as they pleased. But when you have a Parliamentary system of government, when you are having your own responsible ministers, where is the necessity for fundamental rights and fundamental guarantees? You speak of such-and-such-a right being granted to the people. Who, asked Sir John Simon, are going to guarantee them? The responsible ministers? The responsible legislature which is equally bound by the mandate of the people who elect the representatives? Therefore the conception of fundamental rights is utterly foreign to a constitution based on this parliamentary system of responsible government. You can think of fundamental rights in autocratic states; a sovereign can, as a matter of clemency, as a matter of grace, or having been compelled by the voice of public opinion and by a rising

rebellion in his State, issue a proclamation saying, "I hereby guarantee to you such-and-such a right, and in all actions that I do hereafter, I shall so conduct myself that my actions shall not impinge upon those rights". But in the constitution we are evolving here, it has no place.

Thirdly, he said, that there were only two possibilities with reference to fundamental rights; either they are of a justiciable nature or they are of a non-justiciable nature; either they could form the subject-matter of litigation and adjudication in a court of law, or they are not. Take the first right: "all men are equal before the law". On what ground can this form the matter of adjudication in a court of law? How is this right to be enforced in any court of law? It is so general, has no specific application, that it cannot by itself form the subject-matter of any litigation. Therefore in describing these laws as fundamental, you are really misleading the citizen and giving him a sense of guarantee and security which you really know he does not possess on the enunciation of these laws. That was the diatribe that Sir John Simon hurled at those who thought of these fundamental rights. The right of free expression of opinion is guaranteed, but are you sure that this right of free expression can be granted at all times? There are limitations, obvious limitations, which a moment's reflection will show you. You cannot have slandering going on in the name of freedom of speech. There is the law of libel; you cannot abrogate it merely by saying that a fundamental right of freedom of speech inheres in every citizen. Neither the spoken word nor the written word is so absolutely free as you seem to imagine in an enunciation of these fundamental rights in the constitution. Take again the question of blasphemy on which particularly, there is extreme difference of opinion. Professor Laski has said that the whole law of blasphemy is antediluvian and must be abolished. He says that every person has got a right to practise his own religion, to call himself an atheist, free-thinker or anything he likes. Or take another instance, that men and women have equal civic rights. Now in the condition prevailing in India, it is true that women have not equal rights with men. Do you mean to suggest that all your customary law, Hindu Law, your Muhammadan

Law, based on centuries of inequality and unfairness, is done away with by this one section that you have put in the constitutions? These are some of the questions which Sir John Simon asked. It had a very distinct effect on a certain section of the delegation.

But after all, the position was not so hopeless as Sir John tried to make out. It was argued from the other side—and I am trying to put these arguments and counter-arguments fully as this is a question of vital importance, and the more we have the assistance of academicians in the examination of these fundamental rights, the better it would be. It was argued on the other side, that after all is said and done, if the position was so simple as Sir John thought it to be, if it was absurd to have fundamental rights embodied in the constitution, many constitutions have committed this absurdity, and many writers and thinkers who ought to know much on these subjects have committed the very absurdity that Sir John Simon has been condemning. There is no post-war constitution—at any rate that is my recollection—which has not got a long list of such fundamenal rights. Germany heads the list with the Weimar constitution containing a long list of fundamental rights. The subjects of Czechoslovakia, the Esthovian, the Bulgarian and almost all other subjects of post-war States of Europe have got such a list of fundamental rights. There are some fundamental rights even in the American Constitution and therefore, from some points of view at any rate, it seems that it is not a simple matter to dismiss the whole idea of fundamental rights. Secondly, and this is important, fundamental rights, taken at their lowest value, can at least be said to establish a social philosophy, to lay down a set of rules of conduct as much for legislatures and for Governments, as for individuals. The fact that these laws are termed as fundamental is of importance, as embodying at least, if they are not justiciable rights, a code of social philosophy for the conduct of every one. Above all, when a legislation is placed before a legislature, even though it may violate a fundamental right, the very enunciation of these principles will make the legislature hesitate in accepting these laws. It will make the legislature and the Government not to precipitate legislation on such

subjects and not to hurry through those bills which may violate such rights of the individual. Moreover there is a consideration which is of peculiar importance to India. We have been living in an age when fundamental rights have been abrogated, or have never been in existence. Freedom of the press has often been violated, by legislation no doubt. Freedom of association, freedom of speech have also been violated. Therefore British Indian delegates asked for them, if for nothing else, at least to convince the people that there is a new dawn for our country; that the constitution which we are trying to frame means the end of the old state of affairs, and the inauguration of a new and more hopeful state of affairs. It seems right and proper that these fundamental rights should be embodied in the constitution. It would clearly demonstrate that the age of bureaucracy has ended, and the age of democracy has been ushered in; it will educate the people and make them conscious of their own rights, a consciousness which many of them do not possess. Such were at least some of the arguments that were advanced from the British Indian side.

Again, it has been stated that there are minorities which feel unduly pessimistic as to the new state of things and apprehensive as to their position in the new body politic. It is but right that to the extent that we can, guarantees should be given to them, that their religious practices will be observed unhampered; that they will have education in their own languages and so on. These are rights which they value very greatly, and the enunciation of principles embodying these rights would go far to make them realise that under the new constitution they will also have a place in the sun. These considerations far outweigh all those theoretical objections which may be advanced against the enunciation of fundamental rights. This question was looked at from both points of view, and ultimately it was decided that the question should be further examined and an attempt made to separate justiciable rights from non-justiciable rights. Not that non-justiciable rights should not be embodied in the constitution, but that it must be made more clear what are justiciable rights, so that people may realise what their real rights are, and what are their legitimate hopes and aspirations.

With reference to this question, I have further to point out that so far as the State delegates were concerned, they were not agreeable to the enunciation of any fundamental rights whatsoever. I have often asked what have the State subjects to gain under this? So far as fundamental rights are concerned, at a very early stage, State delegates said that if you are going to incorporate them in the constitution, begin this section with a preliminary remark 'This chapter shall apply only to British Indian Provinces'. They made it very clear; there was no equivocation on their part. One of my friends of the British Indian delegation said the State Rulers take it that their subjects have all the fundamental rights and need not have any assurance given on the subject. And we had to accept the position that so far as fundamental rights were concerned, it could only be applicable to British India and it could not be made applicable to Indian States.

I am conscious that I have left out of my lectures many salient features of the constitution. I have not referred to the question of safeguards or the question even of defence. The position with reference to defence is simple. Defence is a federal subject and as I said in my first lecture, one of the reasons why an All-India Federation has been thought of was because military matters like the defence of India were more easily solved in an All-India Federation than in a purely British Indian Federation. But for the time being, owing to extraneous conditions and circumstances, owing to the fact that the army is largely composed of British personnel so far as officers are concerned, it was thought that the army could not immediately be handed over to a federal minister. The subject is a federal subject; it is administered by the Federal Government, if in that federal government, you include also an irresponsible member called the Army Member. There will be a joint Cabinet, composed of the Army Member and of the responsible ministers. The Army Member will not be responsible to the legislature but he will be responsible only to the Viceroy who will administer the subject of the Army as a direct representative of the Crown. In other words, the Army is to a certain extent a Crown subject though it is also a Federal subject. From that distinction flows a number of consequences, some of which have

been slightly mitigated, but others have still to be frankly faced. If the Army is going to be under the control of the Viceroy, if the obligations relating to the Army are to be with the Viceroy, a curious position arises. What about military expenditure? The legislature may cut down the Army budget, as it is called, or may reduce it to a very small proportion. How is the responsibility of the 'Reserved Member' and of the Viceroy to be then discharged. I personally am convinced that one of the great mistakes that is being done by this Government is to make the Army a concern of their own, instead of being a concern of the people. In no other country in the world is this phenomenon to be noted except in India, that the people of the country have no concern with the Army, have no sympathy with the Army; and on the other hand are hostile and utterly antagonistic to all the expenditure that is incurred on the Army. The Army should be the pet child of the State. It is the one living element for the safety and security of them all. It is not the policeman in the street with his baton that is the real preserver of peace. It is the silent watchman on the lonely tower on the frontier of India that is the real saviour of the country. In India no less than in other countries is the Army the real saviour of us all. We have been preserved from annihilation, from invasions which were our lot time and again in centuries past, because of a splendid army; and the Indian Army is one of the most splendid of military forces in the world that is guarding our frontiers. But how few of us are conscious of the fact and how few of us think of the Army in terms of saviours! We think of the Army when it moves in our streets—swaggers if I might say so—when it comes down into our streets to quell rebellions and riots—and that is the only occasion when we have anything to do with the Army—we more often abuse the Army than praise it. This is largely due to the somewhat short-sighted policy which the Government has been pursuing of lowering a curtain and placing the Army behind it, not letting the people know of its activities, its general policies, and the purposes which it is intended to serve; the sort of combats that are going on from day to day on the frontiers of India; and allowing not even the legislature of the land, the select chosen people, to have any insight into military affairs. It

looks as if for some time longer, this blind policy is going to be continued. We tried to mitigate the effect of this policy. For instance it was proposed that owing to the fact that the Army was a reserved subject managed by the Viceroy, there should be a contract budget, that is to say, the amount required for military expenditure should be fixed for five years and that there should be no variation during this period; that the amount whether it was 40 or 45 crores, should be handed over from the Treasury without any question being asked as to its need or how it was going to be spent. Now that involved that the whole process of expenditure on the Army would be outside the purview of any one in the legislature. The Army budget has no doubt been placed before the legislature for discussion; it has even been suggested that instead of one day being given to the Army budget, the Army budget will be presented in sections such as the Civil budget is to-day being presented. But what good is it to present any budget, if the method of arriving at the figures is not understood by the legislature; if we do not know the purposes for which this expenditure is incurred? We know the civil administration; it comes into direct touch with us; we have more often to come necessarily and inevitably into direct touch or conflict with it; and therefore we can understand the civil administration; But with reference to the Army, there has been no such opportunities and that was why the suggestion was made—that instead of having this contract budget, there ought to be an opportunity for the responsible Government to have its influence felt in framing the budget year after year. Suppose again, an economic crisis of the kind that we are passing through were to arise and it was necessary to cut down the military expenditure, but military authorities were not prepared to do so. How can it be done? There was no force which could compel them. These were the considerations which made us suggest that that system of contract budget, which we had agreed to earlier, was not the most proper thing and that there should be constant connection between the Army Member and the responsible minister; that they should work really as a joint Cabinet, in spite of the fact that the Army Member was not responsible; that in framing the budget both halves should

join together and should discuss what should be ultimately allocated to the army.

In the second place we took up this position. With reference to various matters which have been transferred to responsible ministers the British side of the Government have asked for safeguards. They said, 'We are prepared to give you financial responsibility but let us have safeguards to meet such-and-such contingencies; we are prepared to transfer law and order, but let us have safeguards in case of such-and-such a contingency'. We accepted the position and to a certain extent, we have come to agreement as regards safeguards on those subjects. Now the Army stands in exactly the same position. We have given over the Army to you. We want safeguards. It is from our point of view now as necessary that safeguards should be embodied so far as the Army is concerned. You have accepted certain fundamental propositions; you have accepted that the Army should be a joint concern, not merely of the British Government but of India also. We want that to be translated in terms of safeguards. You say that the Indianisation of the Army at a growing pace should be assured; we want safeguards to see that fulfilled. Therefore with reference to the Army, it was consistent with the position of a reserved subject that we should ask for safeguards with reference to the three propositions which were unanimously laid down by the Thomas Committee on Defence at the first session of the R.T.C. Ultimately a comprehensive proposal was put forward. In England many military matters of policy are decided by the army, the War office and the military authorities. But there is one organization which is above all these organizations, called the C.I.D.—not the C.I.D. as we understand it in this country—but the Committee of Imperial Defence which is represented by various cabinet ministers and high military authorities and dominion prime ministers. Now we said with reference to the Army of India, we must have a Committee of Indian Defence. The constitution of that Committee may be somewhat as follows: the Army Member, the Commander-in-Chief, the Member for external affairs may sit on behalf of the Viceroy; we should have the Prime Minister of the Federal Government, the Chancellor of the Exchequer of the

Federal Government and probably the Minister of the Interior of the Federal Government sitting with them. This committee would decide the policies with reference to the military. It would also decide how far those three essentials which were laid down by the Thomas Committee were followed in actual practice and that decision will be laid before the Viceroy. In that way during the transition period, when the Army was supposed to be a reserved or Crown subject, we hope that to a certain extent the slow and steady pressure of public opinion will be brought to bear on the administration of the Army.

Now Gentlemen, I have really come to the end of my task. I have tried to tell you in these lectures what the All-India federal constitution is likely to be. It is not yet an accomplished fact; it has not been framed; it has not even been put in the shape of a bill; men's minds have to be constantly and vigilantly to be kept open to examine the matters which will ultimately emerge and to see how far they are acceptable; how far they require revision. But we must be sure that the essential agreements that have been accepted are carried out.

I should like to say one word more. Addressing an academic gathering, I may indulge in the luxury of a little prophecy. What will be the future of this constitution? How will it ultimately evolve? There has been a great deal of talk of safeguards; there has been very legitimate criticism of some of those agreements which have been entered into by one set of delegates or another. I have carefully avoided any reference to the question of safeguards, and with a little deliberateness probably. I was examining the essentials of the constitution and I must not therefore devote my attention to examining what I consider to be temporary and non-permanent features of the constitution. They may be embodied in it now, but I am as certain as I can be, that their disappearance is only a matter of time; and speaking to this educated audience, I thought I should occupy all the time that I had at my disposal in examining the fundamentals of the constitution and not be led astray by a detailed examination of safeguards. But you may say this. Safeguards there are, safeguards which may even hamper the working of the

constitution. What shall be our position? There is one observation that I should like to make; one reflection comes prominently to my mind. One of the greatest of philosophers has said that it does not matter what the constitution may be; it is the men who work the constitution that count. It is they that form the actual system of Government under which you have to live. It is their knowledge, their experience, their broad-mindedness, their firmness, their independence and their sense of fairness, that count in such matters. Not the system itself, however perfect or imperfect it may be, but the actual workers of the system. Burke says: "The laws go but a very little way. Constitute governments how you please; infinitely the greater part of it must depend upon the exercise of the powers which are left at last to the prudence and uprightness of ministers of State." And it is on those ministers of State, on the future legislators, that much depends in the working of the constitution. How easy it is, with safeguards or without safeguards, if you have a set of ministers and a set of legislators who hardly understand their responsibilities; are weighed down by authority; how easily will they carry out the wishes of an autocratic governor or an autocratic viceroy. It is not the safeguards that count most. If you have a strong, determined ministry—and I am not going into any controversial questions of modern politics at all—I am only trying to philosophize, and to philosophize with the help of you all, if you have got a strong ministry, a ministry of talents, and more than that, of character; if you have a set of legislators who understand the principles of government, and who try to carry out the mandate which they may receive from their constituencies, and in any case try to keep their conscience clear in the decision of those questions which may come before them, more than half the task has been done. Safeguards will fall into desuetude, naturally and inevitably, however strong the Viceroy may be. Remember this: safeguards are sometimes to be used no doubt; but the limitations of their use are obvious. Speaking on the question of safeguards, I said at the last session of the R.T.C., and if you will excuse this personal statement of mine, I will repeat it: I said, 'after all the discussion that has taken place, I am not very much perturbed by these

safeguards. I shall go back to my country and say that these safeguards mean nothing; that nothing tangible or essential has been lost by the safeguards. You will go back to your Parliament and when you have to reply to critics, you will say that by these safeguards, every administrative feature has been kept in your own hands. That is more politics. Each one of us has to try and comfort or to convince his own men in his own way; but barring that, I said, no Viceroy can use these safeguards without raising a severe political issue, without bringing about a constitutional crisis, if the use of those safeguards is not justified. If you can postulate a strong ministry, backed up by a strong legislature, then the Viceroy who uses the safeguards will bring about a constitutional crisis. The responsibility of the ministry—and that limitation will act more than any other limitation, than even the dictates from Whitehall, will prevent a Viceroy or a Governor from using the safeguards. Just look at the converse position. There are no safeguards in the constitution at all; everything is left to the free will of the legislature and the free will of the executive; but you have in office a set of ministers, picked at random, with no common policy, with no determined reason about them; and you have in the legislature various groups unconnected with each other, warring, trying to form cliques; what is the necessity for safeguards? A nod from the Governor, a whisper from the Viceroy, can more effectively than all the safeguards of the constitution get such a ministry to do whatever the Governor or the Viceroy wants them to do. So ultimately, the success of a constitution will depend to a very large extent on the sort of personnel that will be in office or in the legislature; and by the method of their transacting business will the constitution be a help or a hindrance to the nation.

Let me be permitted to give expression to another thought that is uppermost in my mind. The man of action, the politician is generally considered to be a singularly thoughtless animal, who plunges into life's stream regardless of consequences. As a politician I cannot be expected to subscribe to this view. We who were privileged to work at the R.T.C. had as our background a philosophy not unsuited to the

genius of our nation. The constitution was not an end in itself. It had in the first place to function; secondly, it had to provide channels for creative expression in our national life. Before our mind's eye the rising generation came in prominent view. What after all was the use of a constitution if it stunted their development, if it did not provide them with something, of which they could be proud, if it did not lead them into the paths of 'continuous initiative', compromises, initial adjustments, safeguards and reservations—were matters which yielded importance to one factor—that the constitution ought to be the means whereby the creative soul of India could find expression with advantage not only to herself but to the world. The last decade has witnessed a tremendous change in India; the spell has been removed from the changeless east and in its place there stands a swiftly changing orient—whose peaceful pathetic contentment is a thing of the past. It is a great thing to have a democracy; it is a still greater thing not to forget the purpose for which it has been constituted. From the newly created countries of Europe, after the treaty of Versailles, there comes a chilling message now in whispers, now in accents clear and unmistakable—'Representative Government and Democracy are shams; we will elect for new lamps.'

That is the gist of the message. Why has democracy failed in those countries? I am not a believer in the doctrine that democracy is fitted only for Teutonic races. If it were so, then Germany should be a model for other countries to follow and copy. There are many reasons why it has been a failure; one has not however been sufficiently emphasised, partly because forms of Government have mattered more and partly because it is as yet a subconscious tenet of democracy. The institution of Democracy is founded on liberty, equality and fraternity. Liberty and equality—equality of opportunity, have acquired prominence but fraternity curiously enough has been left out of the picture in most democracies. Those that laboured at the R.T.C. did not forget the last portion of this subconscious tenet, which is not certainly the least important and the keynote of the concessions to minorities which to an inexperienced observer will be reminiscent of timidity, is fraternity. The men of the morrow can do much to make

of democracy a success. Our social heritage leaves much to be desired. The centrifugal tendencies explicit and implicit, the various discrepancies as between communities, the superstitious adoration of effete regulations and finally the tragic treatment of man by man—these ought to go. In a federation two tendencies may be traced, the centripetal and the centrifugal. Let those who will lead our country at the dawn of a new era strengthen the centripetal tendencies and consequently create a social federation—the complement of a political one.

And seeing before me young men with an eagerness to dare and do much for their country and its future, I cannot do better than recall to you what a modern moralist Herman Herte makes Zarathustra give as his message—a very Nietzschean message.

‘You are the most pious of peoples’, cries the sage to the young men who crowd round him at the market-place. ‘But what gods has your piety created! The Kaiser and his drill sergeants! Learn to seek God in yourselves. Don’t hang your heads. Don’t whine for a man. The fatherland will not perish if you will only consent to grow up. You Germans are the most obedient of peoples. You have obeyed so easily, so joyfully; you never cared to take a step forward without the satisfaction that you were thereby fulfilling a command. Your country was covered with tables of the law and of prohibitions. How will this people obey when it once more hears voices of men instead of “most gracious commands”? Do not ask “what shall we do.” Listen to the voice within you. If it is dumb know you are on the wrong track. But if your bird sings, follow its note—to the uttermost solitude or the darkest fate’.

